

DAS STANDARD INCORPORATED TERMS AND CONDITIONS*Effective as of October 1, 2021*

These DAS Standard Incorporated Terms and Conditions (these “Terms”) are incorporated into and shall apply to any Program Agreement and Client Order Form (together with these Terms, the “Agreement”) executed between DAS and the client identified in the Agreement (“Client”). DAS and Client may be referred to individually as a “Party” and collectively as the “Parties.”

1) Term, Default, and Early Termination.

a) Term. The Agreement shall remain in effect for a minimum of one (1) year or the Term specified on the respective COF (the “Initial Term”). Except as otherwise set forth in these Terms, the Agreement shall automatically renew for successive terms of one (1) year each (each, a “Renewal Term,” and together with the Initial Term, the “Term”) unless otherwise stated on the respective Program Agreement or COF, or unless either Party provides written Notice (as defined hereunder) of non-renewal to the other at least ninety (90) days before the expiration of the then-current Term. Such renewal shall be subject to the then-current version of these Terms.

b) Material Default; Early Termination. If either Party materially defaults in the performance of any of its obligations under the Agreement, written Notice shall be given to the defaulting Party specifying the section of the Agreement allegedly in default within thirty (30) days of such alleged default. If the alleged default is a Monetary Breach (as defined below) and is not cured within fourteen (14) days after written Notice, or within three (3) days after written Notice of any subsequent Monetary Breach that occurs within the same twelve (12) month period, or for any other alleged default, is not substantially cured within thirty (30) days after receipt of such Notice, or with respect to those defaults which cannot reasonably be cured within thirty (30) days, if the defaulting Party fails, within thirty (30) days after receipt of such Notice, to proceed with all due diligence substantially to cure the default, but in any event does not substantially cure the default within ninety (90) days, then the Party not in default may, by giving written Notice of termination to the defaulting Party, terminate the Agreement as of a date specified in the Notice of termination. Any “Early Termination” (which shall be defined as (i) the termination for any or no reason, except for an uncured default by DAS as outlined above, effective prior to the latest Renewal Term on any COF, or (ii) including as a result of Client’s Monetary Breach as defined below), shall require immediate payment of (a) any outstanding balances; plus (b) liquidated damages calculated as (i) the then current MSC (plus CPI, if applicable), plus (ii) for any variable charges paid in arrears, the average monthly payment during the six months (or if in force less than six months, the number of months in force) prior to termination; with the sum of (i) and (ii) times (iii) the remaining term of the Agreement (or the remaining term of the specific item SKU, if longer), including renewal if within less than the Notice period. Any Early Termination by Client shall not be applied until the next Renewal Term.

c) Effect of Termination. Upon termination of this Agreement for any reason and payment of all obligations and balances due to DAS for the remaining Term of the Agreement, Client may, within 30 days of such termination: (a) request a return of any prepaid deposit amounts (“Deposit”) on file with DAS, which Deposit shall be returned, and (b) transfer its data hosted by DAS, if any, to different system, for the then current fees as outlined herein. If any service is cancelled at renewal, all applicable discounts related to the cancelled service will be automatically cancelled as well, whether or not so reflected on the COF. Upon notice of non-renewal or cancellation for any reason (other than Monetary Breach, which must be paid immediately as stated herein), if Client does not have a valid DDA on file, payment must be made within ten (10) days for the full amount remaining due under the Agreement through its final term. Since any Early Termination may not only result in a loss attributable to a specific transaction but also to the goodwill and enterprise value of DAS, Client acknowledges and agrees that the amount of liquidated damages represents a fair, reasonable, and negotiated approximation of the damages that would be sustained by DAS. Client further acknowledges and agrees that the damages that would be sustained by DAS from Client’s future breach, including (among other possible damage) a loss of goodwill and/or enterprise value, is not ascertainable as of the time of contracting.

2) Payment and Monetary Breach.

a) Payment. Timely receipt by DAS (or its assignee) of all payments pursuant to all agreements between Client and DAS is a condition precedent to all DAS obligations. Client shall pay all fees, charges, and invoiced amounts in full at the time(s) they are due irrespective of and without reduction or delay based upon (a) any claim, dispute, or right of setoff or recoupment asserted by Client at any time for any reason, or (b) the existence or claimed existence of any other dispute or controversy involving Client, DAS, or any other person or entity at any other time. If not otherwise stated, all amounts, including any one-time fees (UFC), monthly fees (MSC), per User fees, PPM fees, minimums, and Additional Charges, are due and payable upon receipt of invoice by DAS, which shall be deemed “received” immediately when electronically transmitted to the Client’s email address on file, or within three (3) days of being mailed by first class mail. All MSC amounts shall be due and payable monthly in advance and must be paid by approved ACH, direct debit or credit card charge initiated by DAS, or payable for the full remaining term in advance. A DDA or CCA is required for all monthly payments and amounts billable in arrears, and the Client agrees to keep current their bank account and credit card information, as applicable. Although DAS shall have no obligation to accept any payments other than by ACH direct debit, or payment in full, in the event DAS does elect to accept such alternative payments, a \$35 convenience fee (or the maximum amount permitted by law) shall be added to each invoice. Any checks, authorized debit, or credit card charges that are disputed or returned by DAS’ bank shall be automatically re-deposited / re-debited, and Client will incur a \$75 Non-Sufficient Funds (“NSF”) fee (or the maximum amount permitted by law) for each time that such return occurs, in addition to any other remedies contained herein, including those provided for Monetary Breach. All amounts not paid within five (5) days shall bear interest at the rate of one and one-half percent (1½%) per month, or the maximum permitted by law, whichever is greater. During any Renewal Term, any MSC shall renew at the renewal rate equal to the then-current MSC plus CPI.

b) Payment Options. The applicable Payment Plan (as set forth in the respective COF) shall be paid in accordance with the following:

i) ZERO MONEY DOWN. No longer offered.

- ii) **STANDARD PLAN – REQUIRES DDA/CCA ON FILE.** If selected on the COF (or if no other Payment Option is selected), Client agrees to pay the “Up Front” amount within ten (10) days of signing this Agreement. The “Up Front” amount shall consist of the Setup Fee plus the first and last month’s MSC, as well as any Deposit. In addition, Client agrees to pay the MSC (as may be adjusted pursuant to this Agreement) by way of ACH, direct debit from their bank account or Credit Card account, which amount shall be automatically, and without further Notice, deducted on the first of each month starting the first of the month following the Effective Date.
 - iii) **PAID IN FULL.** If selected on the COF, Client agrees to provide payment in full within ten (10) days of signing this Agreement, which payment shall be net of the additional discount stated in the COF for this option. No further amounts shall be due for that COF during the Initial Term (except as otherwise stated). Deposit will be fully refunded upon DAS receipt of full payment.
 - iv) **ARREARS SERVICES – REQUIRES DDA ON FILE.** If RCM, CCM, or any other Services billed in arrears (each an “Services Billed in Arrears”) are selected on the COF, DAS shall use reasonable commercial efforts to bill such Services Billed in Arrears within ten (10) days after the end of the month for which services are performed, and (whether or not billed within ten days) such invoice shall be deducted by way of ACH direct debit five (5) days following invoice. All other charges shall be billed and paid pursuant to one of the other Payment Options listed above. Client must pay a Deposit for the average monthly amount of Services Billed in Arrears, and increase such Deposit periodically if advised by DAS that the current Deposit is not sufficient.
- c) **Monetary Breach.** Each of the following shall be deemed a “Monetary Breach”: (i) Non-payment of any amounts due, including but not limited to Additional Charges, within five (5) days of the date when due, subject to service interruption, and excluding any amounts disputed in good faith; (ii) Failure by Client to timely execute all reasonable additional relevant documents or provide verbal authorization when requested, including any delivery & acceptance confirmation; (iii) Client attempts to assign this Agreement in whole or in part, unless assigned pursuant to Section (1716) below; (iv) any notification from Client (in any form) of termination (or intent to terminate) effective prior to the end of the Term (not including Notice of non-renewal effective at the end of the Term); (v) any proceedings in bankruptcy are instituted by or against Client or any guarantor of this Agreement, or if Client or any guarantor of this Agreement files, or any creditor or other person files, any petition in bankruptcy under any law, rule or regulation of the United States of America or of any State, or if a receiver of the business or assets of Client or of any guarantor of this Agreement shall be appointed, or if a general assignment is made by Client for the benefit of creditors; (vi) Client ceases to operate its business; (vii) Client becomes insolvent under any generally accepted measure of insolvency, including if Client becomes unable pay its debts as they become due or if Client does not possess sufficient assets to pay its existing debts; (viii) Client violates any law, regulation, ordinance, or contractual obligation to any person or entity that may result in the termination or suspension of Client’s business operations for any period of time, or of the sale or transfer of any amount of Client’s business or assets to any person or entity; (ix) DAS informs Client of its belief that any event constituting a Monetary Breach has occurred and Client fails within fourteen (14) days cure the breach or provide evidence, reasonably satisfactory to DAS, demonstrating no such breach has occurred; or (x) any change of Client’s ownership, whether in whole or in part, unless assigned pursuant to Section 16) below.

In the event of a Monetary Breach, DAS shall have the right during any cure period to suspend, upon notice concurrent with the written Notice described in Section (1) above, any or all Services and deny Client any or all access to Software, hardware, or security devices including but not limited to firewalls, reconnection to any of which will require a \$500 Reconnect Fee, (ii) the right to immediately terminate the Agreement and recover all damages from Client (including but not limited to amounts due from Early Termination as defined in Section 1 above), and (iii) such other rights and remedies against Client as may be provided under the Agreement and applicable law. DAS’s rights and remedies are cumulative and not alternatives.

3) **Taxes, Travel and Shipping.** Applicable Taxes, shipping, travel expenses, and freight charges, if any, are not included and are billed separately as charged or required by law. Unless stated otherwise, all payment amounts exclude any applicable sales, use, property or any other tax allocable to the System (“Taxes”). Any Taxes payable under the Agreement which are not added to the payment amounts due under this Agreement are due and payable by Client, and Client shall remain liable for any filing obligations. All hardware shall be shipped FOB Origin; title transfers upon shipment. Travel charges will be charged as Additional Charges pursuant to the DAS Travel Policy.

4) **Additional Services.** Any additional services provided by DAS that are not specifically included in the executed COFs (“Additional Services”) shall be subject to the terms hereof; provided, however, that such Additional Services will not be deemed to be included in the price unless otherwise specified or requested in writing, and will be billed as Additional Charges. Client is responsible for any Additional Services, including payment and completing any associated paperwork.

5) **Ownership and Preservation of Property Rights.** Client acknowledges and agrees that all Software and DAS’s and its vendors’ respective intellectual property (i.e., source code, copyrighted or patented material, trademarks, service marks, trade secrets, and proprietary and confidential information) are the property of DAS or its vendors, respectively, and are available for Client’s use only pursuant to this Agreement. DAS or its vendors, respectively, retain all rights in their intellectual property, including any enhancements thereto or derivative works thereof. Client shall not modify, reverse assemble, or decompile, in whole or in part, the Software. It is expressly understood and agreed that title to, or ownership of, any part of the Software or any related items provided hereunder, including any enhancements thereto or derivative works thereof, shall not ever be transferred to Client. Client agrees not to use DAS or its vendors’ service marks, trademarks or brand names (collectively, the “Marks”) relating to the Software without DAS’ prior written permission. DAS or its vendors, respectively, reserve all rights related to the Marks. DAS grant of any right to use any of the Software is subject to the rights retained by DAS or its vendors, which are exercisable in DAS and its vendors’ sole discretion. DAS may use Client’s identification in its marketing literature, including on its website.

6) **DAS Obligations.** DAS agrees to use its reasonable commercial efforts to provide the Products and Services as outlined in the COFs in effect during the Term of this Agreement.

7) **Service Levels.** During the Term of the Agreement, DAS will make commercially reasonable efforts to secure compliance with the Service Level Agreement (“SLA”), available online at <https://DAShealth.com/documents>, as may be reasonably modified from time to time.

8) **Force Majeure.** DAS shall be excused from performance under the Agreement and shall have no liability to Client for any period of time it is prevented from performing any of its obligations, in whole or in part, as a result of an event or delay that is caused, directly or indirectly, by fire, flood, earthquake, pandemic, virus, bacteria, pathogen, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions in the United States, strikes, lockouts, or labor difficulties, third party vendors, Client’s failure or delay in training, changes in law or regulations, or any other similar cause beyond the reasonable control of DAS (each, a “**Force Majeure Event**”). If a Force Majeure Event occurs, DAS will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and it continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. For purposes of clarity, Client’s obligation to pay is not excused by any Force Majeure Event, unless such Force Majeure event prevents DAS’s reasonable performance for more than three consecutive months following receipt of Notice from Client.

9) **Limitation of Liability.**

a) USE OF THE SYSTEM, SOFTWARE, SERVICES, AND GOODS ARE AT THE SOLE RISK OF THE CLIENT. DAS, ITS AFFILIATES, AND THEIR THIRD PARTY VENDORS SHALL HAVE NO LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR ANY DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE PRODUCT OR WITH THE DELAY OR INABILITY TO USE THE PRODUCT, OR FOR ANY INFORMATION, PRODUCTS, OR SERVICES ADVERTISED IN OR OBTAINED THROUGH THE PRODUCT, DAS REMOVAL OR DELETION OF ANY MATERIALS SUBMITTED OR POSTED ON ITS PRODUCT, OR OTHERWISE ARISING OUT OF THE USE OF THE PRODUCT, RESULTING FROM UNAUTHORIZED ACCESS TO THE SYSTEM, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF GOODWILL, ADDITIONAL EMPLOYEE HOURS OR LOSS OF ANTICIPATED SAVINGS OR REVENUE ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE PERFORMANCE OR FAILURE TO PERFORM THEREOF, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF DAS OR THIRD PARTY VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

b) ALL DATA ENTRY AND SUBMISSIONS ARE SOLELY THE RESPONSIBILITY OF THE CLIENT TO REVIEW AND SUBMIT; DAS SHALL NOT BE RESPONSIBLE FOR ANY ERRORS CONTAINED THEREIN, EVEN IF DAS ENTERED OR PREPARED THEM.

c) DAS SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN ANY CLAIMS OR OTHER INTERFACE TRANSMISSIONS TO OR FROM CLIENT. WITH RESPECT TO PROCESS OR TRANSMISSION ERRORS, AS CLIENT’S SOLE AND EXCLUSIVE REMEDY, DAS WILL USE COMMERCIALY REASONABLE EFFORTS TO CAUSE THE CLAIMS CLEARINGHOUSE OR OTHER ENTITY TO REPROCESS OR RESUBMIT THE APPLICABLE CLAIM OR TRANSMISSION. IT IS THE SOLE RESPONSIBILITY OF CLIENT TO REVIEW TRANSMISSION LOGS AND REPORTS AND TO IMMEDIATELY NOTIFY THE VENDOR OF ANY ERROR, OMISSION, OR OTHER DISCREPANCY. DAS SHALL NOT BE RESPONSIBLE FOR ANY UNAUTHORIZED OR OTHER IMPROPER TRANSMISSION BY OR ON BEHALF OF CLIENT. CLIENTS AND END USERS HEREBY ACKNOWLEDGE THAT ANY INFORMATION SENT OR RECEIVED DURING USE OF THE SOFTWARE OR SERVICES MAY NOT BE SECURE AND MAY BE INTERCEPTED OR OBTAINED BY UNAUTHORIZED PARTIES.

d) THE CUMULATIVE LIABILITY OF DAS, ITS AFFILIATES, AND THIRD PARTY VENDORS FOR ALL LOSS AND DAMAGE WHATSOEVER AND HOWSOEVER ARISING RELATED TO THE AGREEMENT OR ANY UNDERLYING TRANSACTION SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT TO DAS DURING THE SIXTY DAYS PRIOR TO THE WRITTEN NOTIFICATION TO DAS OF THE CLAIM.

e) IF DATA BACKUP SERVICES ARE INCLUDED, DAS WILL MAKE REASONABLE COMMERCIAL EFFORTS TO TEST DATA BACKUP AND RECOVERY ON A PERIODIC BASIS, BUT CAN MAKE NO GUARANTEE THAT ANY DATA WILL BE RECOVERABLE, AND CLIENT ASSUMES THE RISK OF ALL DATA LOSS.

f) DAS EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY FOR ANY CLAIM FOR INJURIES OR DAMAGES RELATED TO THE USE OF SOFTWARE FOR DIAGNOSIS, TREATMENT, OR CODING.

g) CLIENT AGREES THAT ANY CAUSE OF ACTION IT MAY BRING ARISING OUT OF OR RELATED TO ANY PRODUCT OR SERVICE MUST COMMENCE WITHIN SIX MONTHS AFTER THE CAUSE OF ACTION ACCRUES OR THE CAUSE OF ACTION IS PERMANENTLY BARRED.

h) NEITHER DAS NOR ITS VENDORS ASSUME ANY RESPONSIBILITY FOR CLIENT’S OR OTHER END USERS’ USE OR MISUSE OF INDIVIDUALLY IDENTIFIABLE INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED, OR RECEIVED WHILE USING THE PRODUCT AND THE MATERIALS WITHIN THE PRODUCT.

i) IN NO EVENT SHALL ANY LIABILITY OF DAS, ITS AFFILIATES, OR THEIR THIRD PARTY VENDORS, EXCEED THE LIABILITY OF ANY VENDOR AS PROVIDED FOR IN ITS RESPECTIVE END USER LICENSE AGREEMENT (“EULA”), AS INCORPORATED INTO THE AGREEMENT, AND DAS SHALL BE A THIRD-PARTY BENEFICIARY OF ANY AND ALL SUCH EULAS.

10) **Limited Warranty.** CLIENT UNDERSTANDS THAT ITS USE OF THE HARDWARE, SOFTWARE AND SERVICES WILL DETERMINE IN LARGE PART THE HARDWARE, SOFTWARE AND SERVICE’S EFFECTIVENESS, AND REPRESENTS THAT IT HAS HAD SUFFICIENT OPPORTUNITY TO REVIEW THE HARDWARE, SOFTWARE AND SERVICES IN THEIR CURRENT FORM, SEEK REFERENCES FROM OTHER CLIENTS AND OBSERVE THE HARDWARE, SOFTWARE AND SERVICES IN USE, INCLUDING FOR ITS SUB-SPECIALTY OR OTHER, SIMILAR SPECIALTIES. WHETHER OR NOT CLIENT HAS AVAILED ITSELF OF SUCH OPPORTUNITIES, CLIENT REPRESENTS THAT IT IS SATISFIED THAT THE HARDWARE, SOFTWARE AND SERVICES MEET ITS SPECIFIC NEEDS, AND HEREBY SPECIFICALLY WAIVES ANY AND ALL RIGHTS OF RESCISSION OR CLAIMS UNDER THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (“FDUTPA”), OTHER SIMILAR STATUTES. ALL HARDWARE, SOFTWARE, PRODUCTS, SERVICES AND GOODS PROVIDED BY DAS AND/OR ITS VENDORS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. DAS WARRANTS ONLY THAT IT WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE SERVICES AS OUTLINED HEREIN; THIS WARRANTY IS THE ONLY WARRANTY MADE BY DAS TO CLIENT. DAS MAKES AND CLIENT RECEIVES NO OTHER WARRANTY, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR

A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND EXCLUDED. DAS DOES NOT REPRESENT THAT THE SYSTEM, PRODUCT, SERVICES OR GOODS WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE, SERVICES OR HARDWARE WILL BE UNINTERRUPTED OR ERROR FREE. WITHOUT ANY LIMITATION, NEITHER DAS NOR ITS LICENSORS WARRANT, GUARANTEE, OR AGREE TO ENSURE THAT CLIENT'S USE OF THE SOFTWARE, SERVICES OR HARDWARE WILL COMPLY WITH APPLICABLE LAWS, AND CLIENT ACKNOWLEDGES AND AGREES THAT IT IS CLIENT'S SOLE AND EXCLUSIVE OBLIGATION TO ENSURE THAT ITS USE OF THE SOFTWARE, SERVICES OR HARDWARE COMPLIES WITH ALL APPLICABLE LAWS.

11) Client Supplied Items. DAS is not responsible for providing maintenance for any Client Supplied Items, or any System issues that result therefrom, even if DAS referred or recommended the source of such Client Supplied Items. Client acknowledges and agrees that it has an affirmative obligation to ensure that any Client Supplied Items meet the then-current DAS Equipment Specifications, as may be amended from time to time (see <https://DAShealth.com/documents>), and that if the Client Supplied Items do not meet all approved specifications, DAS is not obligated to provide any support and Client may be required to purchase additional hardware, software, and/or ISP bandwidth in order to have the System run properly. In the event that Client Supplied Items do not meet specifications, Client shall be responsible for any costs or expenses (as Additional Charges) associated with (i) any additional support provided by DAS that may have resulted from such Client Supplied Items, (ii) any efforts by DAS to determine whether Client Supplied Items meet the specifications, and (iii) the purchase, configuration, and installation of additional hardware, software, networking or ISP Broadband required to meet specifications.

12) Client's Additional Responsibilities.

a) For implementations and training of any product or service, any failure by Client to meet agreed milestones or to attend training may substantially delay Client's Go-Live date or otherwise hinder performance, including their ability to meet governmental or other contractual requirements. In the event Client does not Go-Live within 30 days of an executed COF, unless solely the fault of DAS as provided by Notice from Client, the implementation will be considered complete for all purposes herein, and MSC will continue be charged as if Go-Live had been completed. In such instance, depending on the circumstances and at DAS's sole discretion, Client may be charged for an additional future implementation.

b) Client shall take reasonable steps to ensure the security of its hardware, network, software and Client Data. Client shall be responsible for System and network password management and for ensuring that no virus is loaded onto the System as a result of Client's action (or inaction). Unless otherwise specifically included as part of MSP Services (defined below), Client is solely responsible for the selection, maintenance, and update of its own antivirus and other System protection in its locations.

c) Client is responsible for reporting all suspected software bugs, training deficiencies, enhancement requests, etc. through the then supported DAS reporting channel, (i.e., currently "HelpMeDAS.com").

13) Indemnification and Legal Fees. To the fullest extent possible, Client agrees to indemnify, defend, and hold DAS, its vendors, employees, agents and independent contractors harmless from and against any and all claims, demands, losses, damages, costs, judgments, expenses, or liabilities (including reasonable legal fees) arising in whole or in part from, relating in whole or in part to, caused in whole or in part by, or alleged or claimed to be caused in whole or in part by: (a) Client's act or omission to act, including those acts or omissions of Client's employees or agents; (b) the violation of any law, regulation, or ordinance by Client, its employees or agents; and (c) any injury.

14) Client Data. Client owns its own data. DAS is not the custodian of Client data, and Client agrees that in the event DAS receives a request from a patient of Client for access to electronic Protected Health Information of the patient, Client will (i) provide such access to the patient directly, upon Notice from DAS or (ii) in the event DAS maintains such electronic Protected Health Information in its possession and under its control, provide assistance to DAS as necessary (including monetary or otherwise) to facilitate such provision of Protected Health Information to the patient. Notwithstanding, to the extent not prohibited by law, and consistent with Section 2 herein, DAS has the right to temporarily suspend Client's access if Client has not complied with the terms of this Agreement; any such right shall be extinguished upon Client's performance of all of its duties herein, including payment of all amounts due (including future amounts due) under this Agreement. Subject to HIPAA, the Interoperability Rules and other privacy laws, and notwithstanding any terms of any Business Associate Agreement to the contrary, DAS may access and use such data for the purpose of complying with its responsibilities herein, monitoring Client performance, conducting data analytics and/or otherwise as reasonable or necessary for DAS's proper management and administration.

15) Non-Hire; Non-Circumvention. During the period of the Agreement and for a period of one (1) year following any termination thereof, Client shall not, directly or indirectly: (a) hire, solicit, or encourage to leave DAS' employment, any employee, consultant, agent or contractor of DAS; (b) hire, solicit or engage any such employee, consultant, agent or contractor who has left DAS' employment or contractual engagement within one year of such employment or engagement; or (c) purchase (other than directly through DAS) any product or service provided under this Agreement, directly or indirectly, from any vendor (or reseller of such vendor) that is then or has been within the preceding year contracted with DAS.

16) Non-Assignment. Client may not assign or transfer the Agreement or any of its rights or obligations hereunder without Notice of prior written consent of DAS. It is understood that DAS may subcontract or assign this Agreement, in whole or in part, or some or all of its duties hereunder, by providing Client with written Notice of such assignment.

17) Community Connection (HIE). Client agrees that, subject to HIPAA, the Interoperability Rules and other privacy laws, it will undertake all reasonably necessary efforts to share relevant portions of its data with other medical organizations upon request of such medical organizations, or otherwise in connection with its participation in, any DAS approved HIE.

18) Governing Law and Dispute Resolution.

- a) This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the State of Florida. Without regard to any choice of law or conflict of law provisions or principles, only Florida law shall govern any dispute arising from or in any way related to this Agreement, any of its terms, or the Parties' negotiations and/or interactions leading to the execution of this Agreement.
- b) Dispute Resolution. Prior to commencement of any action or invocation of any dispute resolution procedures (except for Monetary Breach), Notice of default and opportunity to cure must have first been provided, which was then not reasonably cured. If the parties should then have a dispute directly or indirectly arising from or relating to this Agreement or the Parties' respective rights and duties under the Agreement, the Parties will resolve such dispute in the following manner:
 - i) If not resolved by good faith negotiations between the parties and/or their designated representatives within thirty (30) calendar days after either party transmits written Notice from the other party setting forth such difference or dispute, any dispute between the Parties shall be escalated to mediation as provided in (b) below.
 - ii) Upon expiration of the time period in paragraph i) of this Section 18(b) and absent written agreement by the Parties to extend that time period, the Parties shall submit their dispute to any mutually acceptable mediation service located in Tampa, Florida. The Parties will request mediation by providing to the mediation service a joint written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings to occur in Tampa, Florida. Client's corporate representative (in addition to any outside legal counsel) shall travel to Tampa, Florida, to attend the mediation in person. The Parties further agree that all offers, promises, conduct, and statements, whether oral or written, made during the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration, or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
 - iii) Each of the Parties acknowledges that a failure to cooperate and participate in the mediation required under Section 18(b) would cause irreparable harm to the other Party for which monetary damages would not provide an adequate remedy. Accordingly, each of the Parties agrees that if either of the Parties fails to cooperate or participate in the mediation required under Section 18(b), then, in addition to any and all other rights and remedies that may be available, the other Party shall be entitled to pursue and obtain equitable, injunctive, and/or interim relief compelling the Party to cooperate and participate in mediation in Tampa, Florida. Such relief may be sought and entered or awarded exclusively in the following venues: a state or federal court located in Tampa, Florida, or during an arbitration initiated as provided in this Section 18(b). The Parties agree that a Party seeking equitable and/or injunctive relief from a court or an arbitrator under this paragraph iii) of Section 18(b) shall not be required to post any form of bond or security in order to obtain such relief. As set forth in Section 18(a), and without regard to any choice of law or conflict of law provisions or principles, Florida law shall apply. In any proceeding under this paragraph iii) of Section 18(b), Client agrees to submit to the jurisdiction of the courts of Florida and agrees that an arbitrator may order the Client to appear for mediation in Tampa. Client agrees to mediate in Tampa, Florida, without regard to the merits of the dispute, including the Parties' claims or amounts at issue. Should either of the Parties pursue and obtain relief awarded by a court or an arbitrator under this paragraph iii) of Section 18(b), that Party shall be entitled to an award of its reasonable attorneys' fees and expenses incurred obtaining such relief. The Parties agree that the court or arbitrator is authorized to enter an award of such fees and expenses immediately and without awaiting entry of a final order. Relief sought or obtained hereunder shall not limit or otherwise restrict the scope of disputes to be arbitrated.
 - iv) If the Parties cannot resolve the dispute for any reason, including, but not limited to, the failure of either of the Parties to agree to comply with the mediation requirement or to agree to any settlement proposed by the mediator, then upon expiration of sixty (60) days from the date on which Notice under paragraph i) of this Section 18(b) above was transmitted, either of the Parties may submit the dispute to be finally settled by arbitration to be held in Tampa, Florida, as provided in paragraphs v) – ix) of this Section 18(b).
 - v) The arbitration will be conducted by one arbitrator. The Parties will attempt to select a single arbitrator by mutual agreement. If they are unable to do so within thirty (30) days after the initiating the arbitration proceeding, the Parties may request the appointment of a neutral arbitrator. The arbitration shall be administered by the American Arbitration Association. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, except as modified herein or by any other instructions that the Parties may agree upon at the time, except that each of the Parties shall have the right to conduct discovery in any manner and to the extent authorized by the American Arbitration Association. If there is any conflict between those rules and the provisions of this Agreement, the provisions of this Agreement shall prevail. No Party will undertake any proceeding designed to divest an arbitrator of jurisdiction.
 - vi) The arbitrator's decision shall provide a reasoned basis, including express and detailed findings of fact and conclusions of law on all issues raised at the arbitration for the resolution of each dispute and for any award. The arbitrator shall not have power to award any form of damages in excess of either actual compensatory damages or the contractual damages available under any terms of this Agreement or any other documents; except with respect to statutory damages for non-payment, issuing a worthless check, or otherwise causing payment to DAS to be stopped or returned. In no event shall DAS's liability exceed any limitation of liability contained in this Agreement or any document between Client and DAS. The arbitrator shall not multiply actual damages or award punitive damages, except that the arbitrator may multiply and/or award statutory damages (including multiplied damages) for non-payment, issuing a worthless check, or otherwise causing payment to DAS to be stopped or returned.

- vii) The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award shall be entered in a state or federal court located in Tampa, Florida, which shall be the sole and exclusive venue for entry of such judgment and any post-judgment proceedings. In connection with such judgment and/or post-judgment proceedings, as set forth in Section 18(a) and without regard to choice of law or conflict of law provisions that would result in the application of another law, Florida law shall apply to any dispute under this Section 18(b). Client agrees to submit to the jurisdiction of the courts of Florida.
- viii) Each of the Parties acknowledges its breach or threatened breach of any of its obligations under this Agreement would cause irreparable harm to the other Party for which monetary damages would not be an adequate remedy. Accordingly, each of the Parties agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to them with respect to such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specifically as determined by the arbitrator without any requirement to post bond. In addition, the arbitrator may, at the request of a Party, order provisional or conservatory measures (including, without limitation, preliminary injunctions to prevent breaches of the Agreement). Nothing in this Section 18(b) will prevent any Party from obtaining relief in the form of provisional or conservatory measures (including, without limitation, preliminary injunctions, specific performance to prevent breaches, and an order compelling arbitration) in a state or federal court located in Tampa, Florida, which shall be the sole and exclusive forum and venue for such relief; provided, however that no Party will undertake any proceeding designed to divest an arbitrator of the arbitrator's jurisdiction. As set forth in Section 18(a) and without regard to choice of law or conflict of law provisions that would result in the application of another law, Florida law shall apply to any dispute under this Section. Client agrees to submit to the jurisdiction of the courts of Florida.
- ix) **Waiver of Jury Trial and Class Action and Multi-Party Waiver.** THE PARTIES IRREVOCABLY AGREE THAT ALL DISPUTES ARISING FROM OR RELATED TO THIS AGREEMENT WILL BE FINALLY AND EXCLUSIVELY SETTLED BY ARBITRATION. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. ANY ARBITRATION UNDER THIS SECTION 18(b) OR ANY COURT TRIAL (WHETHER BEFORE A JUDGE OR A JURY) WILL TAKE PLACE ON AN INDIVIDUAL BASIS WITHOUT RESORT TO ANY FORM OF CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION, OR TO ANY REPRESENTATION AS OR BY A PRIVATE ATTORNEY GENERAL (THE "CLASS ACTION AND MULTI-PARTY WAIVER"). THIS CLASS ACTION AND MULTI-PARTY WAIVER PRECLUDES ANY PARTY FROM SERVING AS A REPRESENTATIVE OR BEING REPRESENTED IN ANY CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION, AND FROM SERVING AS OR BEING REPRESENTED BY A PRIVATE ATTORNEY GENERAL, REGARDING ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS UNDER THE AGREEMENT. REGARDLESS OF ANYTHING ELSE IN THIS SECTION 18(b), THE VALIDITY AND EFFECT OF THIS CLASS ACTION AND MULTIPARTY WAIVER MAY BE DETERMINED ONLY BY A COURT AND NOT BY AN ARBITRATOR. THE PARTIES ACKNOWLEDGE THAT THIS CLASS ACTION AND MULTI-PARTY WAIVER IS MATERIAL AND ESSENTIAL TO THE ARBITRATION OF THEIR DISPUTES AND IS NOT SEVERABLE FROM THEIR AGREEMENT TO ARBITRATION. IF THIS CLASS ACTION AND MULTI-PARTY WAIVER IS LIMITED, VOIDED, OR FOUND UNENFORCEABLE, THEN THE PARTIES' AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING, SUBJECT TO ANY PARTY'S RIGHT TO APPEAL THE LIMITATION OR INVALIDATION OF THIS CLASS ACTION AND MULTI-PARTY WAIVER. THE PARTIES ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCES WILL A CLASS ACTION BE ARBITRATED.
- c) If any litigation or other court action, arbitration or similar adjudicatory proceeding is commenced by any Party to enforce its rights under this Agreement against any other Party, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, incurred by the prevailing Party in such litigation, action, arbitration or proceeding shall be reimbursed by the losing Party; provided, that if a Party to such litigation, action, arbitration or proceeding prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by such Party on an equitable basis, as determined in the arbitrator or adjudicator in their sole discretion.

19) **"Notices"**. All communications or Notices required or permitted by the Agreement shall be sufficiently given for all purposes hereunder if given in writing and delivered (i) personally to a signatory hereof, (ii) by United States mail, return receipt requested, (iii) by document overnight delivery service or (iv) by facsimile, provided the sender delivers a confirmation copy as otherwise permitted of such facsimile within three (3) business days thereafter. All Notices delivered in accordance with this Section shall be sent to the appropriate address or number, as set forth below, or to such other address or to the attention of such other person as the recipient Party has specified by prior written Notice to the sending Party, and shall be effective upon its delivery to the addressee or three (3) business days after it is sent or dispatched, whichever occurs earlier. Notices shall be delivered, if to DAS, to the attention of **CONTRACT NOTIFICATION, 1000 N. Ashley Drive, Suite 300, Tampa, FL 33602**, Fax (813) 774-9900, and if to Client, at the email, fax or physical address on file with DAS. **Any notice of default or non-renewal sent by Client that is not sent in strict compliance with this Section 19, and specifically referencing this Section 19, will not be considered as Notice under this Agreement.**

20) **Severability**. Each provision of the Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Agreement.

21) **Modification and Amendments**. DAS may from time to time modify these DAS Standard Incorporated Terms & Conditions and either supply Client with a revised copy or post a copy of the amended DAS Standard Incorporated Terms & Conditions at <https://DAShealth.com/documents>. If Client does not agree to (or cannot comply with) the DAS Standard Incorporated Terms & Conditions as amended, Client must advise DAS of such by providing official Notice (pursuant to Section 19) of the specific Section change(s) contested on or before the later of (a) the Effective Date of these terms and conditions, or (b) five days from the date the new DAS Standard Incorporated Terms & Conditions are posted by DAS. Upon DAS receipt

of such timely Notice, DAS may elect to continue with the prior version of the DAS Standard Incorporated Terms & Conditions, or provide Client with the option to terminate the Agreement early pursuant to the immediately previously existing DAS Standard Incorporated Terms & Conditions. Client will be deemed to have accepted the revised DAS Standard Incorporated Terms & Conditions as amended upon continued use of the Software or Services for at least five days after any amendments or revisions are posted, without having provided any Notice as required by this Section. Neither (a) adding any additional products and services nor (b) making grammatical or numbering changes to these DAS Standard Incorporated Terms & Conditions shall be considered a modification hereof, so long as such addition or change does not materially impact Client's then existing rights or obligations, and shall therefore not require any notice. In the event a pre-existing COF or other document references a specific section by number, such reference shall be adjusted accordingly. No other modification or amendment by the Client or any representative of DAS to this Agreement, in whole or in part, is authorized or valid unless such modification or amendment is set forth in a written document executed by an authorized officer of each of the Parties. Unless specifically released by signed writing of a duly appointed officer of DAS, all signed Personal Guarantees apply for the entire duration of the Term, including any renewals, re-contracts and extensions; any newly executed Personal Guarantee does not replace prior Personal Guarantees, but is in addition to such prior Personal Guarantee(s).

22) Entire Agreement and Client's Non-Reliance on Extrinsic Matters. The Agreement (including, without limitation, any Order Forms, Schedules and Addendums) constitutes the entire understanding of the Parties with respect to the subject matter hereof and there are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth or referred to herein. The Agreement supersedes all prior negotiations, agreements and undertakings between the Parties (including any predecessor companies acquired by DAS) with respect to such subject matter, including (a) all terms and conditions and (b) with respect to any specific Items purchased; but does not supersede the remaining expiration or renewal date for Items previously purchased from a predecessor company unless provided for on a COF with Quote Type "TX-DAS" or "Renewal". No course of prior dealing may modify, supplement, or explain any terms used in this Agreement or any term in any document incorporated into the Agreement. The Agreement may be executed electronically or in one or more counterparts and by scan or facsimile, each of which shall be deemed an original. True photocopies shall be deemed as effective as the original signatures. In entering into this Agreement, Client has not relied upon or been induced by any statement or representation by DAS, DAS' representatives, or any other party other than the written terms contained in this Agreement and the documents expressly referenced in this Agreement.

23) Additional Acts. Each party promises and agrees to execute and deliver any additional documents and instruments and to perform any acts which may be necessary or reasonably required in order to give full effect to the Agreement. DAS reserves the right to audit all products and services for compliance; in the event that any audit uncovers that product(s) or service(s) have been used by unauthorized Providers or Users, or have otherwise been undercharged, DAS may retroactively charge (and Client shall pay) for such product(s) or service(s) from the time of initial use as Additional Charges.

24) No Third Party Beneficiaries. The Agreement is not intended to and shall not be construed to give any person or entity, other than the Parties hereto, any interest, rights, or remedies (including, without limitation, any third party beneficiary rights) in connection with the Agreement or any provisions contemplated herein.

25) Material Changes. Notwithstanding anything herein to the contrary, the terms and conditions in the Agreement are subject to periodic review and may be revised by DAS in the event that Client exceeds the average Users to Provider ratio, support cases or calls exceed the DAS average duration or frequency, or a significant change in any insurance, tax, vendor terms, CPI, third party reimbursement, or other regulations, laws, policies or procedures which materially and adversely affect the ability of DAS to provide services hereunder or otherwise render performance by DAS difficult, unprofitable, or burdensome. Likewise, products may be substituted for like products which, in DAS' sole discretion, are as good or better. In the event of any such change in any pricing or product substitution, Client may terminate such product or service only within 30 days of providing Notice thereof as its sole remedy, and hold DAS harmless from any claims, actions, losses or damages arising from or relating to such termination.

26) Relationship of Parties. DAS, in furnishing Services to Client under the Agreement, is acting only as an independent contractor and shall have the exclusive control of the manner and means of performing the work contracted for hereunder. DAS does not undertake by the Agreement or otherwise to perform any obligations of Client, whether regulatory or contractual, or to assume any responsibility for Client's business or operations. Personnel supplied by DAS hereunder, whether or not located on Client's premises, are DAS employees or agents and shall not represent themselves to be otherwise. Nothing contained in the Agreement shall be construed to create a joint venture or partnership between the Parties.

27) Construction. The language used in the Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and the Parties agree that no term of this Agreement shall be construed against any Party under any circumstances. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Headings are for convenience only and are not intended either to interpret any provisions of this Agreement or to create any right or remedy.

28) Authority. Each of the Parties hereto represents to the other that such party has full power and authority to execute, deliver and perform the Agreement, and that the individual executing the Agreement on behalf of the party is fully empowered and authorized to do so. The Parties acknowledge that they have freely negotiated and executed this Agreement without duress after a sufficient opportunity was provided for all Parties to seek and obtain review of the Agreement by legal counsel of their choosing. Client expressly authorizes DAS, subject to restrictions pursuant to HIPAA, to (a) monitor and record all telephonic, internet chat sessions, and other like conversations for the purpose of training, performance monitoring, and documenting such conversations in its business records; and (b) to install remote agents and extract relevant data on any Devices used for Services.

29) Waiver. The failure of either of the Parties to enforce any provision of the Agreement shall not operate as, or be construed to be, a waiver of that provision or of the Parties' rights in connection with any subsequent breach of the same or any other provisions of the Agreement. DAS does

not waive any breach and/or default (including a Monetary Breach) unless an officer of DAS expressly acknowledges such waiver in writing. Unless confirmed in writing by an officer of DAS, any written waiver by DAS does not constitute a waiver of any subsequent breach and/or default (including a Monetary Breach). No delay or omission by DAS in enforcing its rights or remedies under the Agreement shall waive or impair DAS's rights and remedies under the Agreement or otherwise available at law.

30) Schedules. DAS and Client each agree to perform certain obligations and be bound by all of the terms and conditions outlined in the COFs, agreements, amendments, policies, and schedules as may be modified by DAS from time to time at <https://DAShealth.com/documents>. The terms and conditions of such additional COFs, agreements, policies and schedules including any applicable EULA, SLA, DAS Travel Policy, DAS System Requirements, DAS HIPAA Business Associate Agreement (“BAA”), and EDI Transaction Agreement (if applicable) are hereby incorporated into and made a part of the Agreement. Any conflict between these Terms and the terms of those documents shall be resolved in favor of these Terms. All of vendor's rights under any applicable EULA are assigned jointly to DAS and such vendor. In the event that Client requests DAS to execute an additional custom BAA, the parties agree by their continued relationship that any such custom BAA will incorporate the following language quidem ipso jure, notwithstanding anything in such custom BAA to the contrary: “Except as otherwise required by law as interpreted in its most narrow interpretation, nothing in this Business Associate Agreement shall require any actions or standards of Business Associate, or its subcontractors, that are more restrictive or burdensome to Business Associate than that which is required under the Agreement, including Business Associate's incorporated standard Business Associate Agreement (“BAA”), available at <https://DAShealth.com/documents>. Any ambiguity or conflict between these Terms and Business Associate's Agreement, including its standard BAA, shall be interpreted and construed in favor of the Agreement, including the incorporated standard BAA.” For avoidance of doubt, the provisions of the DAS HIPAA Business Associate Agreement, so long as they meet or exceed the minimum required provisions, shall supersede any and all provisions of any custom BAA, notwithstanding any language to the contrary contained in such custom BAA.

31) Confidentiality. Client agrees that this Agreement (including all related pricing, Schedules, Orders, COFs and Amendments) and all additional agreements and written correspondence with DAS are confidential (collectively, “Confidential Information”). Any disclosure of Confidential Information by Client which is not otherwise required by court order is prohibited and considered to be a material breach of this Agreement. Both parties agree that before posting or otherwise making public any disparaging remarks or comments about the other, including but not limited to the use of social media, such party shall have first exhausted the agreed Dispute Resolution process herein.

32) Additional Definitions. “Additional Charges” means charges for services provided that are either specifically identified as Additional Charges or not otherwise included in a COF; Additional Charges will be billed at DAS then standard rates. “Affiliates” means any person, firm, corporation, association, organization, or unincorporated trade or business that, now or hereafter, directly or indirectly, controls, is controlled by, or is under common control with DAS, including without limitation, any subsidiary of DAS. “CCA” means a Credit Card Authorization form for credit card charges pursuant to a valid merchant agreement. “Client Order Form”, which may also be referred to as “COF”, “Order,” or “Quote” (all four terms are interchangeable), means the form signed by the Client outlining specific Software and/or Services purchased. “Client Supplied Items” include any and all software, hardware, equipment, networking, and ISP Broadband or other connectivity channels purchased by the Client other than through DAS. “CPI” is the greater of 5% per year or the annual percentage change in the Consumer Price Index, as published by the US Department of Labor on its website www.bls.gov, for all urban consumers. “DAS” or “DAS Health” means DAS Health Ventures, LLC and its Affiliates, and including its predecessor company, DAS Health Ventures, Inc. “DDA” means a Direct Debit Authorization form for ACH debits. “Devices” means any System with a currently supported Operating System/Firmware, including but not limited to Personal Computers, Servers, Security Appliances, Firewalls, Wireless Directors/Managers, Web Filter Appliances, PBXs, Backup Appliances, Plotter Directors, Fax Appliances/Machines, etc. Onsite servers are the equivalent of three (3) Devices. Multifunction devices are charged per function. Devices are further defined in the Managed IT (“MIT”) / Services Plan (“MSP”) section. “End User License Agreement” or “EULA” means an agreement between either DAS or one of its third-party vendors that applies directly to Client and in some cases, Client's patients and customers. In some cases, the EULA may be also be referred to as “Terms of Service” (“TOS”) or “Terms of Use” (“TOU”), which shall have the same meaning as EULA for purposes of this Agreement. Client agrees that DAS is entitled to all rights as if it were the third party vendor under all EULAs, TOSs, and TOUs, and notwithstanding anything to the contrary contained therein, is specifically included as a third party beneficiary of each. “Engineer” means a DAS employee or independent contractor who has Engineer or Project Manager in their job title, or any manager of such positions performing substantially the same work. “Go-Live” means the first date that the System, a Device, or Service is used for any operations of the Client. “Item” means a particular product or service that is represented by a separate line item or SKU on a COF, Order, Quote or invoice. or “Midlevel Providers” or “Midlevels” include Nurse Practitioners, Physician Assistants, Audiologists, Physical Therapists, Music & Speech Therapists, Speech Language Pathologists, Chiropractors, Dentists, Hygienists, Licensed Social Workers, Midwives, Nutritionists, Dietitians, Counselors, Mental Health Practitioners, Certified Surgical Assistants, Licensed Marriage / Family Therapists, and Neurophysiologists who render care to patients. “MSC” means Monthly Service Charge, and may also just be referred to as Monthly Fees or Monthly when accompanied by a dollar amount. “Maintenance” or “Assurance”, when used in conjunction with software, shall mean periodic updates and hotfixes as provided by the software vendor. “Minimum Fee”, as used in RCM Services, shall mean the Minimum as identified in the COF, or in the absence of that, the average monthly amount billed during the previous three (3) months. “Part Time” means less than 20 hours per week, and is subject to audit. In the event that the average time on the schedule exceeds 20 hours in any 30-day period, DAS shall be entitled to charge two (2) times the differential between Part Time and Full Time Providers from the time of the infraction through the end of the Term (including Renewals) as Additional Charges. “PPPM” means per provider per month. “Providers” mean those Physicians, Optometrists, Anesthesiologists, Psychologists, Podiatrists, and Midlevel Providers employed by or under contract with Client to provide services within the medical field, whether or not they bill separately. “Service(s)” means the services provided pursuant to this Agreement. “Software” is as further defined in this Agreement, including the respective EULA for each software vendor or product. “System” means the embodiment of the hardware, software, and services provided by DAS under the Agreement. “UFC” means Up Front Charge. “Unlimited” training and support means that there is no additional charge (except no shows), but is not the equivalent of “on demand” training and is not a source of data entry. “User” or “End User” means any person who access the System or Services. All training and support requests are subject to advance notice; scheduling and leadtimes are based on resource availability at the time.

Product Specific Terms & Conditions. To the extent any of the following terms and conditions conflict with any other terms and conditions of these Terms, the following applicable terms and conditions shall control solely as it applies to the applicable Hardware, Service or Software.

- 33) **PM/EHR Software** - If the executed COF includes Practice Management (PM) or Electronic Health Record (EHR) software in any form, the following additional terms and conditions apply:
- a) DAS will use reasonable commercial efforts to provide access to one non-exclusive, non-transferable license (“Software”) for each Product/Provider/User combination for which payment has been received (additional added Products, Providers and Users will be billed separately at then current rates);
 - b) DAS will use reasonable commercial efforts to provide access to the Software for all of Client’s other employees who are not Providers;
 - c) Client shall identify at least one “Superuser” who, upon approval by DAS, shall be the primary contact for all training and support requests; all system Users, including the Superuser(s), shall be required to attend periodic training classes offered by DAS, which may be electronic, at the Client site or at DAS offices. Client is responsible for attending weekly project meetings/calls as outlined in the Implementation Plan. In the event that any of Client’s employees do not show for scheduled project meetings/calls or training with less than two (2) business days’ notice (except as may be unavoidable as a result of accident or sudden illness), DAS is entitled to charge for the time at the then current Training rates as Additional Charges, even if Client has an “Unlimited training” plan or the training was otherwise free.
 - d) Proper use of the Software requires customization, setup and training, both initially and periodically as the Software is updated and the needs of the Client evolve. Client is solely responsible for purchasing initial and future customization, setup and training as needed to properly maintain the Software. All customization, setup and training days included are based on estimates only, and cannot be determined with any degree of certainty due to the differences in individual practice requirements, capabilities, and learning capacity.
 - e) DAS may complete some or all of the File Build portion of implementation. Client acknowledges that DAS has no specific knowledge of Client’s business, and therefore may not set up some or all files the way that Client would if they were conducting the File Build. In addition, DAS staff may make data entry or other errors that could materially impact Client’s business and patient care. Client specifically and irrevocably waives any and all rights against DAS with respect to any file build activities.
 - f) Provided that ongoing Support was purchased, DAS will use reasonable commercial efforts to provide ongoing training & support as then offered by DAS. If Support is not purchased on an ongoing basis (with an associated MSC), but rather on an episodic basis, Support shall be billable at \$200 per hour; discounted rates are available for prepaid hour blocks. In the event that cases or calls per provider exceed the average cases or calls per provider by 20% or more, Client will be charged \$200 per hour as Additional Charges.
 - g) All PM/EHR Support services are subject to the Client having in force one of the following options, which shall be a condition precedent to any obligation of DAS hereunder: (i) Maintain hosting services with DAS pursuant to Section40); (ii) maintain Bronze MSP Services (or higher) with DAS pursuant to Section42; or (iii) maintain a TeamViewer or other unattended access remote program as directed by DAS on all Client servers and end point devices that are supported by the PM/EHR Support services; and if (ii) or (iii), also have at least daily offsite backups and disaster recovery. Notwithstanding Client’s failure to comply with this Section, DAS may, at its sole option, but is not required to (even if paid), provide PM/EHR Support services.
 - h) Client agrees to provide, for each location, at least one approved firewall, router, wireless access point, and for each User, an approved computer; whether or not ordered through DAS. Client represents and warrants that it has reviewed the current System Requirements available at <https://DAShealth.com/documents>, and that all Client Supplied Items meet or exceed such requirements. Additional terms and conditions apply to all Client Supplied Items. **Any additional time and materials spent relating to Client Supplied Items will be billed as Additional Charges.**
 - i) If hosted services are included, Client agrees to provide broadband ISP or other acceptable connectivity to the DAS host server facility from the Client location(s), with sufficient bandwidth for optimum performance and usability. Minimum Network Requirements are available online at <https://DAShealth.com/documents>, as may be modified from time to time.
 - j) Client acknowledges (A) the possibility of HIPAA violations, data corruption, virus infection, external hacking, ransomware, or other vulnerabilities, all of which is Client’s sole responsibility unless expressly assumed by DAS; (B) that Client is solely responsible for any and all data loss, corruption, or other IT issues requiring remediation, including any time spent by DAS to assist in any prevention or remediation efforts, at a minimum rate of \$200 per hour (\$275 per hour if it requires the involvement of a third party’s technical engineers); and (C) such time will be billed and payable as Additional Charges. Further, Client agrees to provide DAS with timely and sufficient remote access to Client server(s) to perform scheduled or unscheduled maintenance on Client’s PM/EHR database, to include application of hotfixes and upgrades, and adding or removing Users. Client will also provide Direct IP access for offsite DAS staff to enable provision of contracted software support or related services. All PM/EHR Support services without concurrent Hosting or MSP services require a minimum one month deposit and a current DDA on file.
 - k) Software upgrades and maintenance are only as provided by the Software vendor and are not the responsibility of DAS. If Client has purchased recurring Software Maintenance from DAS, is current on all payments, and has not provided Notice of termination or non-renewal, DAS will provide software updates as provided by the Software vendor in “GA” form. If Client has not purchased recurring Software Maintenance from DAS, is not current on all payments, or has provided Notice of termination or non-renewal, then Client is solely responsible for ensuring Software is updated to within two prior versions back and is otherwise compliant with all laws and regulations.

- l) Client is solely responsible for acquiring, servicing, maintaining, and updating all equipment that allow Client to access and use the Software. Client shall use the Software only in accordance with any and all operating instructions or procedures that may be issued by DAS. Client understands and agrees that the operation and availability of the systems used for accessing and interacting with the Software, including, telephones, computer networks and the Internet or to transmit information, whether or not supplied by Client or DAS, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Software. DAS and its Affiliates are not in any way responsible for any such interference with or prevention of Client's access and/or use of the Software.
- m) Some Software may incorporate, access, or otherwise contain certain products, including, without limitation, CPT codes pursuant to various license agreements. If the Software contains CPT codes, then the following provisions apply:
- i) Client License Grant. Upon receipt of payment by DAS for such CPT code license, Client is hereby granted a nontransferable, nonexclusive right to use the publication developed by the American Medical Association ("AMA") titled Current Procedural Terminology as well as *CPT® Assistant* and *CPT® Changes* (collectively referred to herein as "CPT"), in the United States, at Client's Site solely as part of the Software and solely for the Permitted Purpose. Failure by Client to provide timely payment for any such license, or to otherwise breach this provision, shall be considered a Monetary Breach.
 - ii) Warranty. THE CPT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT BEARS ALL RISK RELATING TO QUALITY, ACCURACY AND PERFORMANCE OF THE CPT.
 - iii) Limitation of Liability. IN NO EVENT WILL DAS, THE AMA, OR ANY THIRD PARTY VENDOR BE LIABLE FOR ANY, INCIDENTAL, SPECIAL, CONSEQUENTIAL PUNITIVE OR EXEMPLARY DAMAGES, ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE CPT, EVEN IF DAS, THIRD PARTY VENDOR OR THE AMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY TO ANY CLAIM OR CAUSE WHATSOEVER WHETHER SUCH CLAIM OR CAUSE IS IN CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL DAS TOTAL LIABILITY FOR ANY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE LICENSE FEES PAID FOR CLIENT'S RIGHT TO USE THE CPT IN THE YEAR IN WHICH THE CAUSE OF ACTION AROSE.
 - iv) Ownership of Intellectual Property. Client acknowledges and agrees that the AMA owns all copyrights in the CPT and that the CPT is a registered trademark of the AMA.
 - v) Third Party Beneficiary. All DAS third party vendors are a direct and intended third party beneficiary of DAS's rights under this Agreement with respect to the provisions herein as they relate to the CPT.
 - vi) Confidentiality. Client may disclose the CPT Products only to the extent required by law, and in such case only after prompt written Notice to DAS allowing it the opportunity to interpose all objections to the proposed disclosure.
 - vii) Updates and Upgrades. Client's right to future updates to the CPT for use in the Software is dependent on a continuing contractual relationship between DAS, its third party vendors and the AMA.
 - viii) Copies. Client may make copies of the CPT solely for backup or archival purposes. All Notices of proprietary rights, including trademark and copyright Notices, must appear on all such copies. At termination of this Agreement, Client shall discontinue use of the CPT Products and destroy or return to DAS the CPT Products and all such copies thereof.
 - ix) U.S. Government Rights. *This product includes CPT® and/or CPT® Changes which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable which were developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60610. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.*
 - x) Other Third Party Products. Client agrees that at any time, DAS may substitute third party products which are incorporated, accessed, or otherwise contained in the Software with other similar third party products.
 - xi) In the event that Client uses CPT codes without paying the appropriate license fee, Client indemnifies and holds DAS harmless for any and all damages, awards, costs and fees incurred by DAS with respect to such use.
- n) Client shall exclusively use the Software (to the exclusion of alternative, competitive software) for the intended purpose, unless otherwise agreed in writing by Notice to DAS.
- o) In the event that an OCR scanner is purchased by Client to be used in conjunction with its PM/EHR Software, Additional Charges may apply on a per scan basis.
- p) The PM / EHR Software vendor End User License Agreement (EULA), available at <https://DAShealth.com/documents/>, is specifically incorporated by reference and made a part of this Agreement.

- 34) **assessURhealth™ (AUH)** - If the executed COF includes assessURhealth (“AUH”) in any form, the following additional terms and conditions apply:
- a) “Software” shall include the assessURhealth™ proprietary Psychometric Screening software on an iPad (“**Tablet**”) or via secure internet access and delivered to the Client via access by Client to a HIPAA secure portal or sent securely to Client’s email address on file, and if separately purchased, interface into Client’s approved EHR.
 - b) Any electronic iPad® tablet(s) (including chargers and cases, altogether, the “**Tablet**”) may be provided at no charge by either DAS or its Distributor, in which case it shall be for the sole purpose of using the Software, and must be returned at the end of the Term. Failure to return any Tablet within 10 days of the end of the Term will result in Client being charged the then current price for Tablet Replacement. Lost, broken or additional Tablets will be charged at the then current Tablet price, plus shipping and sales tax. For tax and insurance purposes, Tablets are considered to be the property of the Client during their lawful possession.
 - c) **30 Day “No Risk” Trial**. Only if this option is included in the COF, Client may cancel this Agreement by sending a Notice of cancellation and returning the Tablet(s) to DAS within 30 days from the earlier of the Effective Date or the date of implementation, in which case the only charges will be for the first month of service. Failure to return the Tablet(s) within the 30-day period shall be evidence of waiver by Client of the trial and any right of early termination pursuant to this Section.
 - d) **Payment Guarantee**. Only if this option is included in the COF, there will be no penalty for early termination if CMS eliminates or reduces reimbursement by greater than 20% for the cumulative total of CPT codes: one of 96127, 96146 or 96160, plus G0442 and G0444, and does not replace with similar reimbursable codes, but only if terminated within 30 days after such change is published by CMS.
 - e) **Not a Medical Substitute**. The Software is not a substitute for independent medical judgment and should not be relied upon for any type of diagnosis or treatment plan for any condition. Results should be interpreted by a medical professional and further assessment is needed to determine if a disorder is present. DAS or AUH may also include certain information, reference guides and databases intended for use by licensed medical professionals. These tools are not intended to give professional medical advice. Physicians and other health care providers should always exercise their own clinical judgment for any given situation.
 - f) **Medical Necessity**. It is the responsibility of the clinician to determine medical necessity when ordering psychological assessments. Neither DAS nor assessURhealth make any recommendations on medical necessity of psychometric evaluations. Psychometric assessments are intended to be administered as part of a battery; therefore, practitioners should administer multiple tests as they determine medically necessary.
 - g) **License Cost Allocation**. If purchased as the AUH Basic Subscription (Item #AUHSUB) prior to January 1, 2019, the monthly charge includes the amortized amount of the total License Cost, which represents 93.985% of the MSC, together with the Maintenance and support fee, which together represent 6.015% of the MSC. License Costs are: (i) equal to (a) the total Term, times (b) .93985, times (c) MSC, (ii) fully earned upon first use or ability to use, and (iii) not refundable except as specifically stated in these Terms and Conditions. In the event of Early Termination, for whatever reason, Client will remain responsible for any remaining unpaid balance of the License Cost, without any right of offset, in addition to all other remedies pursuant to this Agreement. This subsection does not apply to any AUHSUB purchases or renewals on or after January 1, 2019.
 - h) The AUH End User License Agreement (EULA), available at <https://DAShealth.com/documents/>, is specifically incorporated by reference and made a part of this Agreement.
- 35) **Chronic Care Management (CCM)** - If the executed COF includes Chronic Care Management (“**CCM**”) in any form, the following additional terms and conditions apply:
- a) **Primary Service**. Company will generate all Enrollment Documentation and shall perform some or all of the CCM services as follows:
 - i) Provide a comprehensive assessment of and care planning for patients requiring chronic care management services per CMS’s guidelines under CPT Code G0506, reportable once per CCM billing practitioner, in conjunction with CCM initiation;
 - ii) Provide at least 20+ minutes of non- face-to-face time monthly, per CMS’s guidelines under CPT Code 99490, for each patient who enrolls in the program;
 - iii) in some cases requiring moderate or high complexity medical decision making, provide up to 30+ or 60+ minutes of additional non-face-to-face time monthly, per CMS’s guidelines under CPT Codes 99489 or 99487 respectively.
 - b) **Care Plan**. Company shall also create and maintain an electronic care plan (Care Coordination Document), for each patient, addressing the patient’s physical, mental, cognitive, psychosocial, functional and environmental needs, and also maintain an inventory of supportive patient resources.
 - c) **Documentation Management**. Company shall maintain fully auditable documentation of provided services, including time spent communicating with each patient, and with other treating health professionals, for care coordination.
 - d) Intentionally Left Blank.
 - e) **Account Services**. Company shall assign an experienced, industry- credentialed account representative to serve as Client’s direct service contact. The account representative will be supported by an operations and technical-service team available 24/7/365. Company’s invoicing shall be transparent and based on industry standards. Client will receive a complete list monthly of enrolled

patients who may be eligible to be billed pursuant to one of the CCM Services listed above, which will assist Client's billing staff or service in billing CMS.

- f) Client's Responsibilities.
- i) Client shall give Company access to its EHR system within seven (7) days of the Effective Date, and continuously thereafter on a real-time (or near real-time) basis, including the ability to update the Care Plan for each patient in the CCM Services;
 - ii) Client shall identify all of Client's Medicare patients who qualify for CCM services under CPT Code 99490 (i.e., having two (2) or more chronic conditions expected to last at least 12 months, or the remainder of the patient's life, that place the patient at significant risk of acute exacerbation/decompensation or functional decline), as well as which patients qualify as "complex patients" and can be serviced for CPT codes 99489 and/or 99487; Client's Physician practitioner is solely responsible for determining which patients are eligible for service and billing.
 - iii) With benefit of Company's assistance (including its customized patient-directed Enrollment Letter explaining the benefits of Chronic Care Management), Client shall inform all qualifying and interested patients of the nature of the CCM services to be provided by Company, the patient's responsibility for any associated co-pays and/or deductibles, the possible need for sharing their health information with other practitioners, and the patient's right to disenroll from the program at any time.
 - iv) Client shall enroll its first patient under this Section 3735) within 45 days of the Effective Date, and shall use reasonable commercial efforts to enroll at least 10% of all eligible patients within the first six (6) months from the Effective Date;
 - v) Although no longer required by CMS, Client will obtain written consent from all patients for which CCM services are to be rendered by Company.
 - vi) Client is solely responsible and liable for ensuring a face-to-face visit is conducted with any patient receiving CCM Services, provided such face-to-face visit is required by CMS.
 - vii) Client is solely responsible and liable for determining and ensuring whether or not the necessary monthly time element or component of the CCM Services has been met.
 - viii) Client is solely responsible for the appropriate billing and collections from CMS, and if applicable, from its enrolled patients, any and all amounts owed relating to the CCM Services provided, whether provided by the Client or Company.
 - ix) Client is solely responsible and liable for full compliance with all CMS rules, regulations, requirements and procedures, as may be amended from time to time, relating to the CCM Services.
 - x) Client (not Company) is the "directing" party with regard to CMS's guidelines specifying the need for CCM services to be directed by a physician or other qualified health care provider.
- g) EHR system requirements. In order to continue to qualify for billing CMS for provision of CRM services under CPT Code 99490, Client must continue to satisfy CMS's criteria of using certified Electronic Health Record (EHR) technology. This means a version of certified EHR that is acceptable under the EHR Incentive Programs as of December 31st of the calendar year preceding each Medicare PFS payment year. Client's EHR system must therefore continue to:
- i) Include patient demographics, problem list, medication list, and medication allergy list [consistent with 45 CFR 170.314(a)(3)(7)]
 - ii) Allow for the creation of a structured clinical summary record [consistent with 45 CFR 170.314(e)(2)]
 - iii) Allow provider to transmit the Care Coordination Document for purposes of care coordination
 - iv) House the patient's consent for participation in the CCM Program
 - v) House the patient receipt of care plan (electronic/hard copy)
 - vi) Document communications to and from home and community-based providers
- h) Payment. CCM services are Services Billed in Arrears. All other charges shall be billed and paid pursuant to one of the available Payment Options as stated on the Program Agreement or herein. If Client terminates CCM Services prior to the end of the then current Term (including as a result of non-compliance with the terms of this Section 3735), or if DAS terminates CCM Services for cause (including as a result of failure to use reasonable commercial efforts to enroll at least 10% of eligible patients), then Client shall be immediately liable for payment of, in addition to any other Early Termination fees, an Early Termination Fee equal to (a) \$5,000 per Provider, plus (b) the average monthly payment over the prior six months (or number of months of active participation if less than six), times the number of months remaining in the then current Term (plus renewal if the Notice period has already passed).
- i) **The CCM Services are not a substitute for independent medical judgment and should not be relied upon by Client for any type of diagnosis or treatment plan for any condition. Notwithstanding anything contained herein, the Client shall remain the sole responsible and liable party for the appropriate and reasonable medical treatment and/or care of their patients. Physicians and other health care providers should always exercise their own clinical judgment for any given situation.**

- j) The CCM (or CCM Service Provider) End User License Agreement (EULA), if applicable, is available at <https://DAShealth.com/documents>, and is specifically incorporated by reference and made a part of this Agreement.
- k) All CCM Services may, at Company's sole discretion, and without any notice to Client, be subcontracted by Company to another vendor.
- 36) **Consulting, Implementation and Training Services** - If the executed COF includes consulting, implementation, training or any other services in any form (including implementation or training as part of any other Service herein), the following additional terms and conditions apply:
- a) Rates are based on volume commitment, payment terms, and resource availability.
 - b) Implementation services are purchased (or included) in full day increments of eight (8) hours each, and include hours spent conducting any customization, on or off-site training, and for implementation management, coordination and communication.
 - c) DAS does not currently charge for classroom training conducted at DAS offices, unless specifically requested as custom or individualized training. All other training requires an order and payment. DAS reserves the right to schedule all training based on available resources, and to withdraw any free training at its sole discretion.
 - d) Separate or Additional Training and Consulting may require Deposit(s) (as stated on the COF), which if applicable are due in advance and are non-refundable.
 - e) Travel, expenses, and taxes (if applicable) are additional. Client shall pay DAS for all Services and related expenses within 10 days of invoice, failure of which shall be considered a Monetary Breach. In the event of termination by DAS for default by Client for any reason, or expiration of time without having used all the Minimum, the Deposit and any amounts paid shall be forfeited, whether or not services were performed, notwithstanding any other terms or provisions elsewhere. **All unused training days expire worthless 6 months from the date purchased unless otherwise noted.**
 - f) All training requests must be submitted electronically using the training request form found at www.HelpMeDAS.com, and will be handled on a first come, first served basis subject to resource availability. Training will be available online, at DAS offices or onsite, as reasonably determined by DAS.
 - g) In the event that any of Client's employees do not show for scheduled project meetings/calls or training with less than two (2) business days' notice (except as may be unavoidable as a result of accident or sudden illness), even if otherwise not chargeable, DAS is entitled to charge for the time at the then current Training rates as Additional Charges
 - h) DAS will provide training plans and/or class syllabi in advance of all training or make them readily available on www.HelpMeDAS.com, and will require signed training checklist and, at its option, conduct post-training testing, to confirm that the attendees received the planned training.
 - i) Days include up to eight hours, and will be billed in ½ day increments except for remote training, which can be used in one hour increments; time not used during any ½ day or hourly increments is forfeited and does not accrue. All work will be done during normal business hours (8:00 AM - 5:00 PM local time). Work performed at other times, if done at the Client's specific written request, may be billed 1.5 times the normal billing rate. If onsite, Client will provide DAS with reasonable access to all network Devices as needed and adequate space and electrical connections for all equipment. Travel time beyond one hour each way, or for assignments of less than four contiguous hours, is billed at 50% of otherwise applicable rates, plus expenses.
 - j) All estimated days, completion and delivery dates are approximate. In the event that the actual days exceed the estimate, DAS shall notify Client, at which time the Client may decide to terminate the Order at that point, paying only for the days already ordered, or agree to the extended days. In the event that Client cancels any scheduled time with less than ten (10) business days' written notice, unless as a result of a Force Majeure event, then Client shall be responsible for paying for any non-refundable expenses incurred, plus 50% of the scheduled hours.
 - k) DAS shall not be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises as a result of a Force Majeure event or otherwise by any reason beyond its reasonable control, however such delay will extend any Expiration Dates by a corresponding amount of time. In the event that any deposit or estimated hours are not used prior to their expiration, such rates may no longer be applicable and the Deposit shall be forfeited with no further liability by DAS; any additional hours will require a new Order and payment.
- 37) **Electronic Data Interchange ("EDI")** - If the executed COF includes EDI in any form, the following additional terms and conditions apply:
- a) EDI options must be purchased for all of Client's Billing Providers, or none. EDI Options must be for a minimum of one year, and may be adjusted only on the Renewal Date. Number of EDI Providers is subject to audit and penalty for understatement (See Section 23).
 - b) DAS will use reasonable commercial efforts to provide access to the EDI Claims Clearinghouse then in effect through DAS for each Named Provider for which EDI payment has been received (additional fees apply);
 - c) Client shall maintain a permanent, complete and accurate record of all claims transmitted via EDI Clearinghouse services, including the number of claims per transmission and the total dollar amount of each transmission. It is the responsibility of Client to ensure that claims are filed and received by payor within payor's prescribed time limit for filing. Any vendor reports detailing claims transmission are not evidence of payor's receipt of such claims.

- d) All transactions in excess of 500 claims, 500 remittances, or 500 eligibility checks PPM will be billed per transaction as an Additional Charge at then current rates (\$.20 per transaction as of April 1, 2021).
- e) The terms of the EDI Transaction Agreement apply, available at <https://DAShealth.com/documents>.

38) **Government Incentive (“GI”) and Compliance Assistance / Consulting** - If the executed COF includes Government Incentive (“GI”) / Penalty Assistance or Consulting, including Meaningful Use, PQRS, Promoting Interoperability, Advancing Care Information, Quality, Improvement Activities, Clinical Quality Measures, MIPS or MACRA (“Government Incentive Assistance”), MIPS Essential, MIPS Prime or MIPS Premier in any form, the following additional terms and conditions apply (in addition to the additional terms contained under the Consulting and Training Services section):

- a) DAS will use its reasonable commercial efforts to provide the services relating to Government Incentive Assistance as stated on the Order, however, Client is solely responsible for monitoring, compliance, and all data submissions, including confirming their accuracy, submission and receipt. DAS will use reasonable efforts to provide the Client with supporting documentation, however, Audit Assistance is not an included service but may be purchased at the then current hourly rate.
- b) Notwithstanding anything to the contrary stated on any form or addendum:
 - i) for Government Incentive Assistance Essential Packages: (i) Measures included in the Government Incentive Assistance package will be reviewed periodically, but not less frequently than quarterly; and (ii) if expressly included in the package, total assistance will include up to one (1) hour per month, with such time including reviewing the MIPS dashboard in client EHR, analysis, training, attestation assistance, and / or consulting.
 - ii) for Government Incentive Assistance Prime Packages: (i) Monthly Performance reports will be sent to the practice delegate’s email, and not the message center; (ii) Measures included in the Government Incentive Assistance package will be reviewed periodically, but not less frequently than quarterly; and (iii) if expressly included in the package, total assistance will include up to two (2) hours per month for single or combined packages, with such time including running reports, analysis, training, attestation assistance, and / or consulting.
 - iii) for Government Incentive Assistance Premier Packages: (i) Enrollment with DAS Preferred MIPS Registry; (ii) Measures included in the Government Incentive Assistance package will be reviewed periodically, but not less frequently than quarterly; and (iii) if expressly included in the package, total assistance will include up to two (2) hours per month, with such time including reviewing the MIPS Registry dashboard, analysis, training, attestation assistance, and / or consulting.
- c) DAS will make recommendations for additional technologies that may be necessary for successful program participation, but the Client is responsible for purchasing, implementing, and adhering to the proper workflow for these products. The purchase of Government Incentive Consulting packages does not include the following ancillary products that may be required for Medicaid Meaningful Use and/or Promoting Interoperability measures: Security Risk Analysis, Direct Secure Messaging, Patient Portal, Prescription Drug Monitoring Program Interface, Immunization Registry Bi-Directional Interface, Specialized Registry Interface and/or Syndromic Surveillance Registry Interface.
- d) DAS does not currently offer assistance with the Cost category as it is scored automatically by CMS through administrative claims data. Therefore, submission assistance, workflow guidance and recommendations for this category are not included in any consulting package offered by DAS.
- e) Client acknowledges that it is ultimately responsible for reviewing and submitting all Meaningful Use, PQRS, Promoting Interoperability, Advancing Care Information, Quality, Improvement Activities, and Clinical Quality Measures, notwithstanding that DAS may provide assistance. Further, Client acknowledges that the price charged for services is not sufficient to include any warranty against any penalties that may be imposed, and that therefore Client, and NOT DAS, is responsible for any Government or other penalties incurred, and indemnifies and holds DAS harmless from any and all related damages. If requested, DAS may be able to provide Client with access to any insurance coverage that might be available to mitigate any penalties that might be incurred in the event of an error.

39) **Hardware and Third Party Software** - If the executed COF includes in any form the sale or third-party lease of hardware, or license of third party software, the following additional terms and conditions apply:

- a) DAS sells and conveys to Client all of its rights, licenses, title, and interest in the computer system hardware and/or third party software that is specified in the Order (the “Product”) in return for the total payment by Client of the amount specified on the Order (the “Purchase Price”).
- b) Unless subject to a Hardware Payment Plan, 100% of the Purchase Price is due at the time of Order execution, and is refundable by DAS only in the event of non-delivery of the Product, unless such non-delivery is due to Client’s actions or refusal to accept delivery, in which case the Purchase Price is payable in full. All hardware and software sales are subject to Section 3 (Taxes, Travel and Shipping).
- c) Client is responsible for the Monthly Service Charges (MSC), payable as invoiced; MSC is subject to increase at least annually. If the MSC is blank or zero, then Maintenance and Support related to the Product is not included.
- d) Any third party software included on the Order is owned by the respective software company, and only a license thereto is conveyed. Client agrees to be bound by any and all terms of the software license agreement, as if Client were a direct Client from the software company.

- e) Client acknowledges that all hardware and software sold, licensed, conveyed or transferred hereunder are sold, licensed, conveyed or transferred (as the case may be) "AS IS", and DAS makes no express or implied warranties of any type or kind. All hardware contained herein may contain original manufacturer warranties, but none from DAS. Any extended service plans or extended warranties ("ESP's") are subject to the terms of such ESP, and are strictly between Client and the issuer of such ESP. Specifically, DAS makes no representation or warranty that any hardware, software, service, ESP or other asset sold, licensed or transferred hereunder will perform in the manner for which it is intended and **HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**. All other limitations of liability or warranty contained herein also apply.
 - f) Hardware Payment Plan
 - i) Subject to approval by DAS, Hardware may be purchased with a Payment Plan Agreement ("PPA") for a term not less than three (3) months and not to exceed thirty-six (36) months.
 - ii) The total Sales Tax due will be collected at the time of purchase. Up to one (1) Hour of initial remote configuration will be included per device purchased with a payment plan, PPA Hardware configuration hours are nontransferable to any other service including MSP Remote/Onsite support.
 - iii) Client may prepay the remaining outstanding payments at any time with no prepayment penalty.
- 40) **Hosting** - If the executed COF includes private cloud hosting in any form (**not including Microsoft Azure, Amazon AWS, or similar third party hosting vendors**), the following additional terms and conditions apply:
- a) Hosting includes secure data hosting, 99.99% Uptime (as more specifically defined in the SLA), and daily backups. Notwithstanding periodic backups, loss of data is always possible. DAS will use its reasonable commercial efforts to provide backup services pursuant to the SLA, but does not guarantee data recovery or availability.
 - b) If purchased as a separate line item on a COF, optional Disaster Recovery ("DR") services are included. Notwithstanding DR services, loss of data is always possible. DAS will use its reasonable commercial efforts to provide disaster recovery services pursuant to the SLA, but does not guarantee data recovery or availability.
 - c) DAS does not support local "thin client" environments in a hosted solution. To the extent that Client maintains a thin client environment, Client is solely responsible for all thin client maintenance, including Software upgrades and error detection and analysis for any errors that arise that may potentially be caused by (even if not conclusively resulting from) such thin client environment.
 - d) Unless otherwise stated in the Agreement, Hosting pricing includes a maximum ratio of 5 Users and 50 GB of storage for each Provider (inclusive). Additional Charges apply for greater than 5 Users or 50GB per provider, and may be charged retroactively upon audit at the then standard monthly rate per additional User plus additional storage (or any portion thereof) per provider. Hosting pricing does not include RDP or other connectivity software, which if requested will be billed as an Additional Service.
 - e) Hosting pricing does not include any VPN or interface setup or maintenance, which if requested, will be charged as Additional Services, will require a BAA from the respective vendor, and may require proof of cyber liability insurance from the respective vendor before being approved. If any third party vendor requires access to DAS servers, DAS may impose reasonable limitations and safeguards applicable to such access as necessary in DAS' sole discretion to protect the confidentiality, integrity and availability of DAS systems and data.
 - f) Unless PM/EHR Support is contracted with DAS, Client agrees that it has an in-force and effective agreement to cover all required software licenses, including Maintenance and support, and DAS has no responsibility whatsoever for any software updates or maintenance. Any services provided by DAS, other than those specifically provided for pursuant to this Section, unless specifically included on an executed COF, will be billed as Additional Services. If Client does not maintain hosted Software (either through DAS Software Maintenance or otherwise) to within two prior versions back, DAS may, at its discretion, update the Software to the current version and charge such upgrade to Client as an Additional Charge.
 - g) At the termination of any hosting services, Client will be provided options for data retrieval at then current prices, which options may include (subject to technological ability to complete):
 - i) a provision of full data backup, including the backup files in their native format (no deconversion shall be included) for a \$1,000 flat fee (Client is responsible for providing a HIPAA-compliant, secure, encrypted portable drive or disk subject to DAS specifications, together with a pre-addressed, prepaid shipping label or envelope for return);
 - ii) a de-converted database that is able to be readily converted into another format for \$2,000 (appointments), \$3,000 (demographics), \$5,000 plus \$10 per 10GB in excess of 100GB (attachments). (Client is responsible for providing a secure, encrypted portable drive and pre-addressed, prepaid shipping label);
 - iii) electronic copies of patient files in .PDF format for \$5,000 plus \$500 per Provider (Client is responsible for providing a secure, encrypted portable drive and pre-addressed, prepaid shipping label); and/or
 - iv) continued Read Only Hosting, if available, for fees as outlined hereunder.

All data retrieval options require advance payment in full of any amounts due under the Agreement through the end of the Term. Additional charges may apply from third party vendors for data access, which will be provided at DAS' cost. DAS will permanently destroy its copy of all Client Data within 60 days following termination.

- h) **Read Only Hosting** is a special form of hosting for clients who have otherwise terminated services. For COF's including Read Only Hosting, the following additional terms apply:
- i) As of the Effective Date of the Read Only Hosting COF, Client will have Read-Only access to their database for the unique Users and during the term specified on the COF. COF must include all Providers included in the Client's most recent COF, notwithstanding whether those Providers are still current at the time of the Read Only Hosting COF.
 - ii) Client understands and acknowledges that they will not be able to make any changes to any files, or transmit or receive any electronic data interchange, including but not limited to prescriptions, claims, or remittances. Due to the database being in read-only status, Users may experience degraded or limited printing functionality, certain reports and functions may not be available, and the client may receive errors that may safely be ignored. Client further agrees that the amounts listed on the COF will be direct debited from their account on file, and that the terms of the DDA on file will continue in force for the remaining term of the Agreement. Support services for Read Only Hosting is limited to only providing reasonable assistance with obtaining access, and no other support.
 - iii) The full amount for the Term of the COF will be deducted or is payable immediately upon receipt and acceptance by DAS of the COF. Any partial months will be calculated as if a full calendar month. If a DDA is provided, the MSC Amount will be deducted on the first of each month until terminated pursuant to these Standard Incorporated Terms & Conditions. If a DDA is not provided, and notwithstanding anything to the contrary in these Terms, the COF is not renewable and will automatically terminate upon the end of the stated Term, and a new Setup and Database Recovery Fee will be required to continue service thereafter.
 - iv) Read Only Hosting pricing is as follows:
 - (1) Aprima: one-time fee of \$500 per Provider plus \$100 PPPM, with a minimum of twelve (12) months paid in advance.
 - (2) assessURhealth: one-time fee of \$250 plus \$50 MSC, with a minimum of twelve (12) months paid in advance.
 - (3) Other: Not available at this time.
 - v) **Notwithstanding anything to the contrary contained elsewhere in the Agreement, unless the Client continues with other services under the Agreement (not including the Read Only service), all other rights of Client under the Agreement are terminated with the execution of any Read Only Hosting COF and will be of no further force or effect, although Client's obligations under the Agreement continue.**
- i) Microsoft Azure, Amazon AWS, and similar third party hosting vendors' hosting terms are covered under the respective End User License Agreements. Azure, AWS, and similar third party hosting vendors' usage over the agreed amount will be billed as Additional Charges.

4.1) **Integrations, Interfaces, Backups, Conversions and Custom Reports** – If the executed COF includes Integrations, Interfaces, Backups, Conversions or Custom Reports in any form, the following additional terms and conditions apply:

- a) DAS will make commercially reasonable efforts to implement requested Integrations, Interfaces, Backups, Conversions and Custom Reports; there are no guarantees that they will be successful or delivered in any specific timeframe, notwithstanding anything stated to the contrary. All payments for Integrations, Interfaces, Backups, Conversions and Custom Reports are due in full up front, and are non-refundable. In the event that DAS commences an Interface based on a PO from the third-party vendor, and the vendor does not pay within 30 days of Go-Live (or 60 days from the COF Effective Date, whichever is earlier), the Client shall be solely responsible for payment.
- b) Conversions, Interfaces and Custom Reports are provided solely based on the terms of any executed Conversion, Interface or Custom Report Request Form, respectively. Conversions and Custom Reports shall be "delivered" when they are complete pursuant to the specification included in the respective Request Form. Any additional work beyond the written specification included in the respective Request Form shall be billed as Additional Charges at the then standard rate for Engineers (currently \$275 per hour).
- c) All third-party interface pricing assumes cooperation of other vendor and device compatibility; otherwise, additional charges may apply. Third party vendors may also institute charges, for which Client is solely responsible. Any delay in Go-Live resulting in whole or in part from delays by the third-party vendor will result in MSC charges commencing based on the otherwise scheduled Go-Live date, which shall be presumed to be 30 days from the Effective Date of the COF, whether or not the Interface is live at that time.
- d) In the event that a third party offers to pay for the interface, any such payment shall require a third party subsidy agreement; including confirmation that payment of any such subsidy will be in strict compliance with Stark, Anti-Kickback, and all other laws and regulations, and that the third party and Client shall each indemnify and hold DAS harmless from any damages related thereto. Interfaces will not be started until such agreement and funds are received in full.
- e) Client should require that its third-party interface vendors have a BAA from the respective vendor on file with the Client as the Covered Entity. DAS may require proof of cyber liability insurance before being approved.
- f) Interfaces may be discontinued by DAS in the event that a third-party interface vendor is in breach of HIPAA or this Agreement, or DAS determines in its sole discretion that the discontinuation is necessary to protect the confidentiality, integrity and availability of electronic

Protected Health Information; upon discontinuation for any reason (other than nonpayment), Client will no longer be billed for the discontinued interface.

- g) If the COF includes Backup or Deconversion services, Client will be provided options for data retrieval at prices stated herein, which options may include a provision of the backup files in their native form, a de-converted database in a form that may be converted into another system format, and/or electronic copies of patient files in .PDF format. **All data backup and deconversion options require advance payment in full of any amounts due under the Agreement through the end of the Term.**

42) **Managed IT (“MIT”) / Services Plan (“MSP”)** – If the executed COF includes MIT or MSP in any form, or with respect to subsection (a) below, no MIT or MSP is included at all, the following additional terms and conditions apply:

- a) **Basic Managed IT** includes any program that is not specifically designated in the COF as titled below, or if no MSP program is included at all. No monitoring is included; standard hourly rates apply (currently \$275 per hour for Engineers, \$200 per hour for other MSP staff) for Remote and Onsite Support (plus travel, if on site). No discount is offered on Hardware. Upon Client’s request, Network Assessment Services may be provided at DAS’s discretion.

b) **Per Provider Pricing (for existing contracts only; no longer offered)**

- i) **Bronze MSP** Monthly Support Program includes:

- (1) DAS Security & Optimization Suite, including Corporate Grade Antivirus, Corporate Grade Antispyware, Windows and Antivirus Patch Management,
- (2) Up to one (1) hour a month per Client of remote virus and spyware management and remediation
- (3) Proactive System Health Monitoring
- (4) Temp File and Internet Debris Clean-up
- (5) Bronze level discounted hourly rates for Remote or Onsite Support.
- (6) Applicable Bronze discount on Hardware

- ii) **Silver MSP** Monthly Support Program includes:

- (1) Bronze MSP benefits, plus
- (2) Unlimited* Remote IT Technical Support
- (3) Silver level priority After Hours Support (Remote Only – see SLA)
- (4) Silver level priority and discounted hourly rates for Onsite Support (see SLA)
- (5) Hardware and software Configuration for hardware and software purchased from DAS
 - (a) Configuration for hardware and software purchased from a third party is available at standard hourly rates
- (6) Vendor and warranty management assistance included for hardware purchased from DAS
- (7) Applicable Silver discount on Hardware

- iii) **Gold MSP** Monthly Support Program includes:

- (1) Silver MSP benefits, plus
- (2) Gold level priority Support (see SLA)
- (3) Gold level priority After Hours Support (see SLA)
- (4) Periodic Strategic Review
- (5) Onsite Support. Customer will receive priority Onsite Support when needed. Up to 2 hours PPM are included; time not used during any particular month may be rolled over for up to a maximum of three (3) months.
- (6) Applicable Gold discount on Hardware

- iv) MSP “Bronze”, “Silver”, and “Gold” pricing includes a maximum ratio of 5 Devices for each licensed Provider (inclusive). Additional charges apply for greater than 5 Devices per Provider, and may be retroactively charged as Additional Charges upon audit.

c) **Per Device Pricing**

- i) **MSP Security Services** Monthly Support Program includes:

- (1) DAS Security & Optimization Suite, including Corporate Grade Antivirus, Corporate Grade Antispyware, Windows and Antivirus Patch Management,

- (2) Proactive System Health Monitoring
 - (3) Temp File and Internet Debris Clean-up
 - (4) Security Services level discounted hourly rates for Remote or Onsite Support.
 - (5) Hardware and software Procurement services
 - (6) Applicable Security Services discount on Hardware
- ii) **MSP Business Services** Monthly Support Program includes:
- (1) MSP Security Services benefits, plus
 - (2) Unlimited* Remote IT Technical Support
 - (3) Business Services level discounted hourly rates for Onsite Support
 - (4) Hardware and software Configuration
 - (5) Vendor and warranty management assistance included for hardware purchased from DAS
 - (6) Applicable Business Services discount on Hardware
- iii) MSP “Security Services” and “Business Services” pricing is charged on a per “Device” basis, and may be retroactively charged as Additional Charges upon audit. See Device Definitions under Additional MSP Program Definitions.
- iv) 100% of all Devices with Approved Operating Systems at all locations under management or control of the Client must be included; Devices not covered will be retroactively added as Additional Charges upon audit. See the Section below for Approved Operating Systems.
- v) “Unlimited” remote support is limited to covered Devices, and is subject to additional hourly charges if the hours per Provider or hours per device exceed the average for all Clients by more than 20%.
- d) **Per User Pricing - Cap Your Costs (“CYC”)**: CYC pricing is charged on a per User basis, and will be retroactively increased or decreased based on actual Users included for any portion of a calendar month. Retroactive adjustments will not exceed three (3) months.
- i) **CYC Managed IT Services** includes:
- (1) DAS Security & Optimization Suite, including Corporate Grade Antivirus, Corporate Grade Antispyware, Windows and Antivirus Patch Management
 - (2) Proactive System Health Monitoring
 - (3) Unlimited* Remote IT Technical support
 - (4) Unlimited* scheduled onsite IT service and labor, as agreed by DAS in its reasonable discretion
 - (5) Hardware and software Configuration
- ii) **CYC Managed Cybersecurity Services** includes:
- (1) Unlimited* remote Cybersecurity Service labor
 - (2) Periodic IT Security and Compliance Audit
 - (3) Security Awareness Training (“SAT”), including annual Phishing testing and dark web monitoring, among other services (see below for additional services included)
- iii) **CYC Managed IT Projects** includes:
- (1) Unlimited* IT project labor for reasonably anticipated projects (scheduled in advance), and as agreed by DAS in its reasonable discretion
- iv) **CYC Managed Suite** includes all benefits of:
- (1) CYC Managed IT Services,
 - (2) CYC Managed Cybersecurity Services, and
 - (3) CYC Managed IT projects
- v) CYC Flat Fee pricing (no longer offered). If any CYC services were purchased on a flat fee (i.e., not per User), and Users increase by more than 20% from the date originally purchased (including as and when purchased from predecessor companies as “CYC” or other names with flat monthly fees per Client for similar services), DAS has the right to modify such Services to a per User basis upon providing thirty days advance Notice.

- vi) “Unlimited” support and labor is limited to covered Users, and is subject to additional hourly charges if the hours per User exceed the average per User hours for all Clients by more than 20%.
- e) Any Remote Support provided for products or services not purchased, but were recommended or for which a Quote was provided, will not be included as part of any package and will be charged at the standard Remote Services Rate as an Additional Charge.
- f) **Additional MSP Program Definitions**
 - i) **After Hours Support** – All coverage is during standard business hours, defined by DAS as 8:00 AM – 8:00 PM Eastern time Monday through Friday (excluding DAS holidays). After hours remote support (and in case of severe emergencies, on-site support) is available at no additional charge except for Basic, Bronze and MSP Security level services. For Basic, Bronze and MSP Security level services, Client will be charged for After Hours Support at 150% of the standard hourly rates.
 - ii) **Device Definitions**
 - (1) Device – Desktop PC, Laptop, Tablet, Security Appliance, Wireless Access Point (WAP), Secondary Server, Host Server
 - (a) Secondary Server: Any Non-Database or Primary Application Virtual Server
 - (i) Examples: Terminal Server, Web Server, Exchange Server, Print Server.
 - (b) Host Server: Any Physical server hosting Hyper V or VMware Operating Systems
 - (2) Device – Core Server: Any Physical or Virtual Server hosting a Database or Primary Application
 - (i) Examples: EHR/PM SQL/Advantage/Oracle Database Server, EHR/PM Application Server
 - iii) **DAS Security & Optimization Suite**, including Corporate Grade Antivirus, Corporate Grade Antispyware, Windows and Antivirus Patch Management, includes reasonable commercial efforts to provide the following:
 - (1) Performance, Availability & Predictive Failure Monitoring – DAS will utilize a Desktop/Server Security Suite monitoring system designed to track the availability and performance of covered critical networking components, including covered servers, and managed networking gear (e.g. routers, firewalls, managed switches, etc.). The monitoring system will provide the DAS Help Desk with real time alerts that will be responded to under the terms of this program. The system will also allow for the periodic production of reports which will be made available to the Client.
 - (2) Patch Monitoring & Management – DAS will utilize a Desktop/Server Security Suite which will monitor the operating system patch levels of covered systems that run Approved Operating Systems and are connected to the network. This includes servers, desktop workstations, and laptop/notebook computers. This system also allows DAS to deploy patches utilizing strategic timing based on best practices. DAS is also able to monitor and manage patch levels of Microsoft Office applications, and certain critical Microsoft back office server based applications such as Exchange and SQL Server.
 - (3) Virus Definition Monitoring & Management – DAS will utilize a system that monitors antivirus definition levels of all known systems.
 - (4) Client agrees to use only the DAS Security & Optimization Suite during the term that this product is included pursuant to any duly authorized COF, to the exclusion of all other similar programs.
 - iv) **Hardware Payment Plan** – See the Section above on Hardware.
 - v) **Hardware and Software Configuration** – “Basic Remote Configuration” labor for the following equipment is included under the price of the Silver, Gold, Business Services and CYC Managed IT Services programs for the following new or replacement equipment purchased from DAS (or its predecessor companies): personal computers (desktops, workstations, laptops, tablets), standard general office software (microsoft office software, pdf viewing software, internet browsers, cloud infrastructure connectors, file compression and/or extraction software, media players, manufacture maintenance suites, vpn/broker software, runtime applications and video conferencing software) on covered personal computers. Remote configuration labor on new equipment to prepare it for Client usage will be typically accomplished at DAS offices prior to the equipment being shipped to Client premises. If needed, onsite installation labor provided by DAS will be provided as Onsite labor as covered under the specific Program. Basic Remote Configurations typically include: Device firmware/driver updates, security updates, operating system core updates, bloat/adware removal, the installation of the DAS remote monitoring and management software, locally installed mass storage encryption, and the installation of the DAS security suite. All other required client configuration items not listed above will be considered a Project and billed under those terms. Remote configuration labor is not included for the following equipment: servers, phone systems, purchased or leased department-level or higher equipment such as copy machines, any equipment which requires unique certification or training outside of standard IT practices, any software on these types of equipment, any Line of Business applications as described below (with the exception of basic PM/EMR client Software installation if Client has purchased the respective PM/EHR Software Support services from DAS), and office-wide network infrastructure upgrades. Remote configuration labor for any new or non-covered equipment will be billed at discounted onsite labor rate defined on the MSP Pricing Guide.
 - vi) **Hardware and Software Procurement** – DAS will provide advice and recommendations for hardware and software to meet Client’s existing or new requirements. DAS will provide reasonable commercial efforts to procure hardware and software with optimal sourcing

from all major hardware manufacturers, at market rates or better. Hardware and software cost is not covered under this program. For new hardware or software computers installed in excess of the total Devices then being paid under device-based plans, Client will be charged for full MSC for the month in which the device was installed and through the remainder of the contract period, unless subsequently adjusted pursuant to the terms of this Agreement.

- vii) **Network Assessment Services** – May be provided by DAS with any MSP service, or upon request by any DAS Client. In the event that such Network Assessment Services are provided, Client agrees that DAS has the right to install a remote agent on Client’s equipment and to extract relevant data. Client further agrees that they are responsible for providing access to all of its equipment in order to make such Network Assessment Services accurate.
- viii) **Onsite Support** – only offered in the DAS Health Standard Territory. The DAS Health Standard Territory automatically includes a 50-mile radius from any of the following locations: Tampa FL, Valdosta GA, Aurora IL, Salem NH, Las Vegas NV, Nashville TN, Amarillo TX, and Houston TX, as may be updated from time to time in the Company Travel Policy. Basic, Bronze, and Security Services level programs may receive Onsite Support as and when available, at standard Onsite hourly rates. Silver and Business Services level programs may receive Onsite Support at the Silver or Business Services discounted rates, respectively. Gold and CYC level programs and MSP Clients with Prepaid Onsite Hours will receive priority Onsite Support when needed at no additional charge (subject to plan hours). Up to two (2) hours PPPM are included with the Gold level program; time not used during any particular month may be rolled over for up to a maximum of three (3) months. Costs for travel & lodging (if needed) apply per the DAS Travel Policy.
- ix) **Proactive System Health Monitoring** – DAS will utilize a Desktop/Server Security Suite which will monitor computers and servers for common problems such as impending hard drive failures, enabling DAS Engineers to use reasonable commercial efforts to resolve many such problems before they cause unexpected and extended downtime. Any such Security Suite will be governed by the terms of such software manufacturer’s license agreement, which is available upon request.
- x) **Periodic Strategic Review / Virtual CIO (VCIO) Services** – Periodic calls will be held at Client’s reasonable request to review monitoring reports and service requests, discuss priorities for the following period, and to assess the overall satisfaction of the services being provided.
- xi) **Remote IT Technical Support** – Systems or End User problems or issues that involve covered systems, assuming the Client has met all expectations and requirements contained herein, and assuming the nature of the issue is not listed as an exclusion, will be handled remotely in the most appropriate and expedient manner, and are included in the price of the Silver, Gold, Business Services and CYC Managed IT Services programs. Remote services included under Bronze MSP do not roll over if not used during any calendar month.
- xii) **System Administration** – Basic remote system administration is included as part of the Silver, Gold, Business Services and CYC Managed IT Services programs. Basic system administration tasks include such actions as resetting passwords, assisting with basic shared folder creation and the associated permissions, creating and removing Users from the User directory, adding a printer to an existing workstation, minor software updates, etc.
- xiii) **System Maintenance** – Basic remote automated maintenance tasks are included as part of the Silver, Gold, Business Services and CYC Managed IT Services programs.
- xiv) **Temp File and Internet Debris Clean-up** – DAS will utilize a Desktop/Server Security Suite which is designed to monitor and automatically clean up temporary files and internet browser cache to keep systems running smoothly and efficiently.
- xv) **Other Services – Not Covered under any MSP Program; Available as an Additional Service**
 - (1) **Website Maintenance** – Not a covered service under any MSP programs. Where provided as an Additional Service, DAS will perform basic text and photo updates on the covered site. This program will not cover graphic design or database programming. Client must provide FTP access to allow DAS to perform site updates. This program does not cover website hosting fees. Domain registration and/or maintenance is a separate service, if offered, and does not include any Website Maintenance.
 - (2) **Google Apps / Microsoft365 (fka Office365) / Cloud Email** – Not a covered service under any MSP programs. Where covered as an Additional Service, DAS will perform administrative duties for the company account, including adding or removing Users. This program does not cover license or access fees for Google Apps or similar Cloud email solution. Client must provide administrative access to allow DAS to administer the account. Any additional Users will be billed in arrears and subsequent MSC adjusted accordingly.
 - (3) **Onsite / Offsite Data Backup Monitoring and Maintenance** – Not a covered service under any MSP programs. Where covered as an Additional Service, DAS will perform basic monitoring and maintenance of this solution. Covered maintenance tasks may include the following in regard to the backup solution only and not the Devices being backed up, up to a maximum of one (1) hour per Client per month (additional hours will be charged as Additional Charges): troubleshooting and resolving backup errors and failed backups, reinstalling backup software on the local machine, clearing old backups per the retention policy, coordinating with Client to ensure desired files are backed up, and performing periodic test restores of files to ensure data integrity. All Offsite Backup plans require a minimum 12 months. Where a backup device is provided, it is the property of DAS and must be returned upon termination of the service, or will be billed at the then replacement cost as an Additional Charge. **Client shall not introduce or maintain any primary data source on the backup device; it is for backup purposes only. In the event that Client introduces**

any primary data onto the backup device, DAS may delete and destroy such data at its sole discretion, and Client assumes all liability related thereto.

- (a) Tier 1 (Network Storage or cloud application w/Cloud Repository): client will designate a folder structure, cloud application account and User hierarchy that will be accessible only via a LAN connection or cloud application connector. Once established, the data will be saved local via a shared network path or cloud application connector and then securely mirrored in a cloud repository with a 1-year retention. *File existence verification only* (Examples include but are not limited to: Cloud NAS devices or an external storage device set for F&F Backup cloud solution to Microsoft One Drive; SKU's include: MSPOFFSITEMONITORINGMSC, MSPOBU1-MSC, MSPSWBDASFLI1-MSC, MSPSWBDADFLI5-MSC, SWSBADDRIVE-MSC, MSPBACKUP-MSC, MSPBACKUPTX-MSC, HWSNDNASS2TB-MSC, and any other SKUs not otherwise identified below);
 - (b) Tier 2 (Full Local Image w/Cloud Repository): Core Files - Client will designate core files that will be backed up via a nightly full image backup. Core System: Client will designate a system that will be backed up via a weekly full image backup. Both core backups will then be securely mirrored in a cloud repository with a 1 year retention *File existence and local image continuity verification only* *A locally encrypted mass storage device is required for the tier 2 solution* (Examples include but are not limited to: Datto Cloud Continuity, Microsoft One Drive any other cloud based appliance-less solution; SKU's include: HWSBADC1TBPC-MSC, SWSBAEBUPC-MSC);
 - (c) Tier 3: (Full Image w/Cloud Virtualization): Client will designate a system that will be backed up via a daily full image backup. Backed up Images will then be securely mirrored to a Cloud Replication image server with a 1 year retention *Both local and replicated Image continuity with cloud virtual machine boot up verification only* *A local mini appliance is required for the tier 3 solution**One mini appliance per device being backed up* (Examples include but are not limited to: Any 3rd generation Alto device or newer; SKU's include: HWSBADC2TB);
 - (d) Tier 4: (Full Image w/Local and Cloud Virtualization) Client will designate a system/s that will be backed up via a daily full image backup. Backed up Images will then be securely mirrored to a Cloud Replication image server with a 1 year retention *Both local and replicated Image continuity with local/cloud virtual machine boot up verification* *A local appliance is required for the tier 4 solution* (Examples include but are not limited to: 2nd and 3rd generation Datto Siris device or newer SKU's include: HWSBADMF1TB-MSC, HWSBADD4TB-MSC, HWSBADE6TB, MSPHWFUNBAD6TB-MSC).
- (4) **Hardware setup and configuration** – Setup and Configuration of any hardware or equipment not purchased from DAS will be charged at the applicable labor rate as an Additional Service.
- (5) **Other Equipment or Services** – Any equipment or services stated on the MSP Pricing Guide that are not otherwise specifically included, are excluded, and available as an Additional Service.

g) Exclusions / Additional Conditions

- i) **Onsite Support** – Systems or End User problems or issues which cannot be handled remotely, at DAS determination, will be handled at Client office locations in the most appropriate and expedient manner at the Onsite hourly labor rate for the respective Program (no additional charge for CYC Managed IT Support, except Travel expenses if applicable).
- ii) **Project/Integration Work** – Project/Integration work is defined as any service not specifically included above and not required to maintain the functionality of covered equipment during the course of typical daily operations within existing Client office locations, whether such service is performed remotely or on site. Examples of such project work include, but are not limited to: physical movement of equipment within an office or between offices, installation of storage area networks, and Client staff training on hardware and software purchased from DAS. Unless included in CYC IT Managed Projects, projects are outside the scope of this program and as such will be quoted and invoiced separately as an Additional Service, if offered by DAS.
- iii) **Application Software** – Line of business applications such as accounting packages, CRM software, PM/EMR/EHR software, ERP software, etc. that are not specifically included herein are excluded.
- iv) **Hardware Manufacturer Warranty** – All hardware covered under this program must be under hardware manufacturer basic warranty, paid for by the Client, to ensure DAS has access to up to date drivers and firmware as needed for appropriate system maintenance and security, and to ensure malfunctioning hardware parts can be efficiently replaced by the manufacturer in a timely manner. Under such basic hardware manufacturer warranty, the manufacturer will supply the replacement parts; DAS will provide onsite labor at discounted rate (or no charge under CYC Managed IT Services) as defined on MSP Pricing Guide to uninstall malfunctioning parts and install manufacturer-supplied replacement parts. Any work done on hardware that is out of warranty will be billed at standard hourly rates, notwithstanding that such labor might be otherwise included in an Unlimited Plan or otherwise. DAS will perform annual audits of covered equipment to identify out-of-warranty equipment for resolution via replacement or extended warranty purchase, however, such audit shall not be a condition to Client's responsibility to maintain such warranties. All Hardware is subject to the DAS Standard Incorporated Terms & Conditions relating to Hardware.
- v) **Software Support** – All software covered under this program must have basic support from the software manufacturer to ensure DAS access to the current software bug fixes and security patches. Such basic software support is often provided free by software vendor, if not and such support is required to address an issue, this support from the software vendor will be paid for by the Client separate from this program. DAS will perform annual audits of covered equipment to identify out-of-warranty equipment for resolution via

replacement or extended warranty purchase, however, such audit shall not be a condition to Client's responsibility to maintain such purchased support. All software is subject to the DAS Standard Incorporated Terms & Conditions relating to third party software.

- vi) **Hardware Replacement Cost** – Hardware replacement strategy is handled on a case-by-case basis and as such, the hardware and software cost associated with hardware replacement falls outside this program, unless explicitly included. Hardware replacement can take the form of warranty, extended warranty, manufacturer's support contract, DAS Hardware-as-a-Service ("HaaS") Contract, onsite spare, or purchase as needed. Hardware support options will be discussed as part of the Audit deliverables to ensure an appropriate hardware replacement strategy exists for all covered equipment.
- vii) **Consumables and Cabling** are excluded, including but not limited to toner, paper, fuser, and scanner refresh kits.
- viii) **Backup Tape Rotation** – If applicable, labor to perform onsite tape rotation and offsite transit and storage of tapes are excluded and are specifically the responsibility of the Client.
- ix) **Antivirus / Antispyware Software** – Client agrees to utilize the DAS-provided Desktop/Server Security Suite, which includes antivirus / antispyware software, remote support and system health monitoring capabilities, automated patch management and automated virus definition management, on all covered servers and computers.
- x) **Internet Service Fees** – Client will purchase and provide ongoing internet access to covered systems at Client expense. Client will ensure covered systems are at the minimum accepted level under the requirements for the combination of all software applications and other ISP usage, is turned on and connected to the Internet to allow DAS remote access for support purposes.
- xi) **Security Appliance Management** – All MSP Programs require that all client internet traffic be routed through an approved Security Appliance and that DAS be granted administrative rights to manage the appliance. All remote Users must have an approved Security Appliance.
- xii) **Outdated Operating Systems** – Only Devices with Approved Operating Systems may be connected to the network and will be covered. Any labor and materials that are necessary to bring current Devices with non-approved (outdated) operating systems, or resulting from such Devices, will be billed at current rates, notwithstanding any plan coverage to the contrary. Approved Operating Systems are subject to change, but currently include Microsoft Windows 8/8.1, 10, Server 2012/2012, 2016, 2019 Mac OS , Sierra+ , , Server 5, VMWare 6.5+, SonicWALL 6.5+, Cisco ASA 8.4+, Sophos UTM 9+, XG 16+, Ruckus Unleashed, and Ubiquiti airOS *+.
- xiii) **Responsibilities upon Termination** – Upon termination of any applicable MSP services, all security credentials shall remain the property of DAS until such time as all balances due under the Agreement (including renewal if terminated less than 90 days prior to any Renewal date) are paid in full. Client understands and acknowledges that their failure to make payments as due may result in service interruption, for which Client is solely responsible.
- h) The use of the terms "Standard", "Deluxe", "Professional", "Enterprise" and similar terms are specific to DAS Health only, and not necessarily indicative of any similarly named term with respect to third party hardware, software, or devices, unless specifically noted otherwise.

43) **Remote Patient Monitoring ("RPM")**

For Future Use.

44) **Revenue Cycle Management ("RCM")** - If the executed COF includes RCM in any form, the following additional terms and conditions apply:

- a) **DAS Obligations.** DAS agrees to use its reasonable commercial efforts to provide the following for the Term of the Agreement:
 - i) DAS will use reasonable commercial efforts to perform billing and collection functions at or above standards maintained by the Medical Group Management Association (MGMA), to the extent of the information provided by Client.
 - ii) DAS will produce all claims and billings in a manner that directs remittances to the Client's designated location. Provided that Client has purchased patient call services and executed an agreement with DAS for patient statements, Client may refer any telephone communication related to such billing to DAS offices. DAS will be accessible to Client representatives (and its patients, if applicable) on normal business days from 8:30 a.m. to 5:00 p.m. (Eastern Time). If DAS accepts credit card or ACH payments on behalf of Client, such acceptance must be administered through a DAS approved third party merchant services vendor, for which Client will be invoiced directly from the third party or by DAS as Additional Charges (at DAS option). If Client does not purchase the DAS statement solution, Client may not refer patients to DAS; however, if Client does make such referral in violation of this provision, a \$20 surcharge for each patient call will be payable by Client as Additional Charges.
 - iii) DAS may, at its sole discretion and shall not be required to, enter any patient information needed to complete an account, including but not limited to name, address, social security, phone number, insurance information and any other information as needed to facilitate billing and collection services for Client.
 - iv) DAS will use reasonable commercial efforts to review and monitor the claims information provided by Client for completeness, consistency and correctness, and will request and obtain from Client any and all additional information as may be required to file complete and accurate claims. To assist in this process, Client will make patient information available, remotely, through its practice

management and electronic health record system (“PM/EHR”) as provided by DAS. For the purpose of clarity, DAS monitoring is not a substitute for Client’s responsibility for completeness, consistency and accuracy of claims, which are Client’s sole responsibility.

- v) DAS will not cause any third-party collection services to be performed on Client accounts until Client approves said referral. DAS will agree standard procedures with Client prior to recommending referral for third party collection activity. If patient statements are sent, such statements will be administered through a DAS approved third party, for which Client will be invoiced directly from the third party or by DAS as Additional Charges (at DAS option). Whether or not patient invoices are sent, and/or whether or not balances are approved for collections, DAS may write off all uncollected balances (including insurance and patient balances) after 90 days without Client approval, unless DAS believes in its sole discretion that they are collectable.
 - vi) DAS will provide, upon request, a monthly financial summary showing totals for the following: beginning A/R, charges, receipts, adjustments, ending A/R, number of procedures, and net collection %, and other reports as may be agreed by DAS from time to time. Provided that DAS has provided Client with its PM/EHR system, Client may also produce its own detail reports on demand from within the system, and has near real-time visibility.
 - vii) DAS will make available to Client upon reasonable request, at Client’s sole expense, any and all information or documentation directly related to any or all of their own patient accounts receivable.
 - viii) DAS will process denial reconsiderations on all denied claims, additional payment requests for underpaid claims, and will file appeals as appropriate and necessary in DAS sole discretion.
 - ix) DAS acknowledges that all monies collected on behalf of Client, whether in the form of checks, electronic funds transfers or otherwise, are the sole property of Client and will be collected solely in the name of Client.
 - x) Unless otherwise agreed, DAS shall have no responsibility or obligation to collect Client’s unpaid but billed claims or Client’s accounts receivable in existence at the Effective Date of this Agreement (“Old A/R”). The Parties may agree to have DAS collect such Old A/R as an Additional Charge. In any case, DAS may write off all Old A/R that is older than 180 days prior to the Effective Date.
 - xi) All services performed by DAS will be in compliance with applicable law and third party payor protocols and requirements.
 - xii) DAS will uphold and abide by all rules, regulations, and laws as they pertain to privacy for Client with regard to Client confidential and proprietary information, and their patient records, unless specifically authorized to provide to any third party.
 - xiii) DAS will designate a specific individual to undertake primary responsibility and serve as primary contact person for Client with respect to the services contemplated by this Agreement.
- b) Client Obligations. Client agrees as follows:
- i) During the term of this agreement, Client will use no other company for the billing of their medical charges, will not use internal staff to bill their medical charges (unless specifically carved out by a fully executed Addendum), and agrees to pay DAS based on the total Client collections, including for all Providers no matter the service location, and whether or not actually collected by DAS (including if self-collected), unless specifically carved out by a fully executed Addendum.
 - ii) Client acknowledges that DAS will rely on the information submitted by Client for use in the billing process. Client also agrees to provide DAS with timely access to all electronic payor portals. Client agrees to contract with DAS for EDI services (through an EDI vendor as determined by DAS at its sole discretion) for each billing Provider.
 - iii) Client will enter all patient information needed to complete an account, including but not limited to name, address, social security, phone number, insurance information and any other information as needed to facilitate billing and collection services for Client.
 - iv) Client will provide to DAS all new patient documentation necessary to establish an account, including legible copies of Patient Information form, insurance cards, and hospital/nursing facilities face sheet, when applicable, in a timely fashion.
 - v) Client will enter into the PM/EHR system all clinical notes, Diagnosis and CPT codes (including modifiers) at the time of patient visit; or not later than 3 business days thereafter. It is Client’s sole responsibility to enter all coding, including but not limited to entering modifiers. However, in the event that Client requests DAS to enter modifiers, and DAS agrees to do so (normally for an additional fee), any such rules for entering modifiers must be clearly specified in the Client Protocol, and Client assumes all risks for the entry of such codes and modifiers. Client will provide DAS with unfettered access to its PM/EHR and EDI system(s), and not obstruct, delay, or otherwise inhibit DAS from filing or releasing claims on a timely basis. DAS may provide coding services as an Additional Service at an Additional Charge.
 - vi) Client will enter all information directly into the PM/EHR system designated by DAS, and to the extent not able to be provided digitally, will have available on a daily basis; all superbills, charge forms (if applicable), record of direct payments received, and/or demographic information changes obtained as a result of patient interaction. In the event that DAS enters demographics and/or charges on behalf of Client, there shall be an Additional Charge of 2% of all charges entered for which DAS provided any manual entry.
 - vii) Client will provide EOB’s to DAS within three (3) working days of having received them. DAS has the absolute right to audit all Client EOB’s, and Client will provide access to its accounts on all Payor online sites. Failure to provide DAS with timely EOB’s will result in a five percent (5%) Additional Charge for all payments represented on such EOB’s. In addition, DAS has the right to audit Client financial

records pertaining to the bank accounts with deposits relating to any EOBs or patient payments. If Client (a) does not provide DAS with reasonable access to its online accounts; (b) does not allow DAS to complete a reasonable audit under this Section; or (c) is found to not have submitted EOB's or patient payments for more than two percent (2%) of all payments received by Client during any particular time period as determined by DAS, then at DAS' option, DAS may either terminate this Agreement and the Client will owe as Additional Charges three (3) times the minimum monthly amount due times the number of months otherwise remaining in the Term, or (aa) Client shall be charged a surcharge of 50% times any otherwise applicable rate for the remainder of the Term, (bb) Client shall be liable for any amounts found on EOB's and patient payments not produced; and (cc) Client shall be liable for any other damages under this Agreement.

- viii) Notwithstanding anything to the contrary (unless pursuant to a specific addendum) Workers Compensation, personal injury, and auto insurance claims shall be billed at 25% of Collections.
- ix) Client will otherwise comply with the terms of the Agreement, including the Schedules, Exhibits, and Client Order Form(s).
- x) Upon termination of services, or at DAS' reasonable request at any time prior to termination, Client shall retrieve or authorize DAS to ship to Client or destroy, any records being stored by DAS, at Client's sole expense, payable in advance. If Client does not provide such authorization or advance payment, DAS may take reasonable efforts to notify the appropriate state medical board of Client's failure to adequately protect its records and provide an opportunity to cure prior to its destruction of such records prior to their destruction.

c) Payment

- i) Client shall pay to DAS on a monthly basis commencing with the first month following the effective date of this Agreement an amount equal to the percentage on the COF, as a percent of all revenue collected or posted to Client accounts during the prior month (as otherwise adjusted herein), or Minimum Fee, whichever is greater. Additional Charges are over and above any Minimum Fee. Such service fees will be based on the collected or posted revenue of all physicians employed, affiliated with, and/or practicing at sites owned or operated by Client wherever located; and includes revenue collected for service performed at hospitals, assisted living facilities, nursing facilities, patient homes or other off-site locations. The Minimum Fee is based on the number of Providers represented on the COF; any additional Providers may require an additional Minimum Fee on a prorated basis. State Medicaid collections that are not permitted to be charged as a percent will be instead charged at \$4.00 per claim submitted, subject to the Minimum Fee.
 - ii) Unless otherwise stated on the COF, RCM Minimum Fees are considered MSC and shall be due on the first of the month for which services are performed. Fees for services in excess of the Minimum Fee shall be Additional Services Billed in Arrears within ten (10) days after the end of the month for which services are performed, and shall be deducted by way of ACH direct debit five (5) days following invoice. All other charges shall be billed and paid pursuant to one of the available Payment Options as stated on the Program Agreement. For so long as such RCM Services are in effect and Client makes all payments due thereunder, any RCM Discount shown on the COF(s) shall be in effect.
 - iii) Upon termination or expiration of the RCM Services, DAS may, at its option: (a) continue to provide full collection efforts on all outstanding accounts receivable for ninety (90) days at the contracted percentage rate, and for which the Minimum Fee will be due per month during such time; or (b) immediately cease all collection efforts and charge two (2) times the Minimum Fee, in order to compensate for the claims previously billed by DAS but for which DAS did not receive remuneration. After such termination or expiration, Client is responsible for removing/deactivating DAS RCM staff credentials from any systems, portals, etc., and all outstanding accounts will be returned to the Client for final collection at Client's sole expense.
 - iv) In the event that the RCM Services are terminated prior to the term of this Agreement, for any or no reason, any RCM Discount shall immediately be void, and full pricing shall be in effect under the Standard Plan, with the "Up Front" amount due being immediately due and payable by way of ACH direct debit, which amount shall be automatically, and without further notice, deducted. If Client terminates RCM Services prior to the end of the then current Term, Client shall be immediately liable for payment of, in addition to any other Early Termination fees, an Early Termination Fee equal to (a) \$5,000 per Provider, plus (b) the greater of (i) the average monthly payment during the prior six months (or if in force less than six months, the number of months in force), or if Client was not substantially in compliance with Section 45(b) above, the average monthly payment of the six months during the Term with the highest collection amounts; or (ii) the Minimum Fee; times the number of months remaining in the then current Term.
 - v) In the event that client changes its PM or EHR system at any time during the Term, DAS may, at its sole option: (a) charge a one-time setup charge at then prevailing rates; and (b) charge an additional MSC rate at then prevailing rates based on the new system deployed; or (c) terminate the Agreement, which will be considered an Early Termination by Client.
- d) Additional Services. Additional Services, including but not limited to credentialing, contract negotiations, document storage and retrieval, and any other service not specifically enumerated herein, are not included in the price. Client is responsible for any Additional Services, or if provided by DAS, will be as an Additional Charge.
- e) Other Consents, Authorizations and Limitations. Client authorizes and consents to DAS' access to any and all records pertaining to Client's provision of medical services, and payments therefore, including but not limited to any such records available from any other health care provider and any payer of benefits, including but not limited to Medicare, Medicaid, any health care insurance company ("Payor"), and any other person or entity providing payment for any medical or health care services provided by Client or any applicable physician. Further,

Client consents to and authorizes DAS to fulfill any reporting requirements that DAS, or any of its agents or employees may have under applicable law, or that are necessary or appropriate in DAS' sole discretion, and Client agrees to hold DAS, and its agents, employees, officers, directors, shareholders, and assigns, harmless from any and all claims, actions, proceedings, losses, damages and expenses arising from or caused by such reporting. In the event Client directs DAS not to bill patient for patient's portion of payments for medical services provided by Client, Client shall release and hold harmless DAS and its respective employees, officers, directors and shareholders for any losses or damages incurred as a result of such directive. Further, each party hereby agrees to defend indemnify and hold harmless the other party and its respective employees, officers, directors and shareholders from and against any and all claims, suits, injuries, demands, losses, costs, expenses, obligations, liabilities and damages, including without limitation, reasonable attorneys, paraprofessionals and law clerks fees throughout all stages of litigation including all appeals and all settlement, bankruptcy, and/or collection proceedings arising from such party acting reasonably and in good faith upon such directives from the other party. In accordance with applicable laws, regulations and Client's Policy and Procedures, DAS has discretion to negotiate the amount of the bill or payments for the medical services provided by Client to its patients, including but not limited to negotiating with patients, patients' attorneys or representatives, insurance carriers, and/or third party payors. DAS shall have no liability for any failure to timely submit bills (including any denials of payments by insurance companies or third party payors) which result from Client's failure to timely provide all necessary complete and accurate information and data to DAS. Notwithstanding anything contained herein to the contrary, DAS shall not be obligated to perform any duties that would result in any violation of federal, state or local laws or regulations.

- f) **Additional Limitation of Liability.** DAS' sole responsibility with respect to errors and/or omissions that occur is to correct such errors without additional cost to Client upon receipt of notice thereof. DAS shall have no liability to Client for any loss occasioned by Client's conduct or the conduct of Client's officers, agents, contractors or employees, including without limitation any loss arising out of incorrect or incomplete information. In no event shall DAS be liable to Client for lost profits or incidental or consequential damages or for any amount in excess of aggregate fees paid by Client to DAS within the sixty days prior to such claim, it being understood and agreed that Client hereby expressly waives any and all claims against DAS for any loss, cost, damages or liability that may be incurred by Client as a result of DAS' acts or failures to act hereunder in excess of such amounts. DAS assumes no responsibility with respect to any unclaimed property, including unclaimed overpayments. Client acknowledges that Client is responsible for the accuracy of the fees and all other data provided to DAS for use in the provision of the Billing and Collection Services. DAS shall have no liability for the (a) inability of third parties or systems beyond the control of DAS to accurately process data, or (b) transmission to DAS of inaccurate data by Client, any hospital at which Client provides services, or any other third party. When accepting patient payments on behalf of Client, DAS will use reasonable commercial efforts to only accept such payments directly into a portal as directed by the Client, and Client expressly indemnifies DAS for any errors or omissions made in the course of such payment receipt activities. Client shall indemnify and hold harmless DAS from any liability whatsoever for any coding services (including entering, changing or deleting modifiers), and for DAS storage, retrieval, shipping and destruction of any Client records

45) **Security Risk Assessment ("SRA")** - If the executed COF includes SRA in any form, the following additional terms and conditions apply:

- a) Unless specifically included on the COF, SRA is not included in any Services.
- b) If included, SRA services (as outlined below) will be provided during each Calendar Year for which (a) the SRA was initially ordered, provided that there was an Up-Front fee paid, or (b) 12 months' MSC has been paid or agreed to be paid, and there has been no default or late payments by Client, or (c) a full year of MSC has been paid in advance.
- c) Subject to the terms contained herein, if "Security Breach Prevention Platform" subscription has been ordered on the COF, the following services are included:
- i) Annual comprehensive HIPAA Security Risk Assessment tool, including: Satisfy Meaningful Use Requirement – Core Objective – Protect electronic health information (*to conduct or review a security risk assessment of the certified EHR technology*), Live Risk Assessment Interview (Online Meeting), Live Risk Assessment Review (Online Meeting), Additional Security Recommendations, HIPAA Compliance Snapshot, Executive Summary Report, Detailed Findings Report, and Threats Analysis / Risk Determination
- ii) On-Demand HIPAA Security Training, including: Engaging Training Videos, Compliance Testing, Employee Certificates, Administrator Training Reports, New Hire Training, and Security Tips and Reminders
- iii) Use of Compliance Portal, including: Employee Access to Security Policies and Procedures, Business Associate Tracking, Security Incident Module, Server Room Access Tracking, Disaster Recovery Plan Storage, Articles and Reference Materials, and Contracts and Document Storage
- iv) 19 Customized Security Policies and Procedures, including: Videos Explaining Security Policies, Sample Business Associate Agreement, Sample Notice of Privacy Practices, Other Sample Templates
- d) If requested, DAS may be able to provide Client with access to purchase additional Cyber Insurance through its vendor. It is the Client's responsibility to retain evidence of any insurance policies purchased and work directly with those institutions. **Security Awareness Training ("SAT")** - If the executed COF includes SAT in any form, the following additional terms and conditions apply:
- i) Unless specifically included on the COF, SAT is not included in any Services.
- ii) If included, SAT services (as outlined below) will be provided during each Calendar Year for which (a) the SAT was initially ordered, provided that there was an Up-Front fee paid, or (b) 12 months' MSC has been paid or agreed to be paid, and there has been no default or late payments by Client, or (c) a full year of MSC has been paid in advance.

- iii) Subject to the terms contained herein, if “Security Awareness Training” subscription has been ordered on the COF, the following services are included:
 - (1) Monthly Phishing Campaigns and Periodic Dark Web Scans provisioned and evaluated by the Cybersecurity team at DAS.
 - (2) On-Demand Security Training, including: Engaging Training Videos, Compliance Testing, Employee Certificates, Administrator Training Reports, New Hire Training, and Security Tips and Reminders
 - (3) Use of Compliance Portal, including: Employee Access to Security Policies and Procedures, Business Associate Tracking, Security Incident Module, Server Room Access Tracking, Disaster Recovery Plan Storage, Articles and Reference Materials, and Contracts and Document Storage
 - iv) 19 Customized Security Policies and Procedures, including: Videos Explaining Security Policies, Sample Business Associate Agreement, Sample Notice of Privacy Practices, Other Sample Templates
 - e) In the event that the number of Client’s employees exceeds the maximum number included in the purchased package, Client will be required to purchase a higher level package that includes the correct number of employees, and pay the differential to bring them to the eligible package from the time of first charge, with such payment to be made prior to the time of the SRA. Failure to upgrade to the appropriate package will render the Client ineligible for any SRA or SAT, and all payments made will be forfeited with no refund.
 - f) **It is Client’s sole responsibility to ensure that Client is in compliance with HIPAA and all other applicable local, state, and federal laws and regulations. The SRA and SAT do not take the place of Client’s diligence and responsibility for compliance, and is only a tool to provide assistance in such compliance. DAS shall have no liability to Client for any loss occasioned by Client’s conduct or the conduct of Client’s officers, agents, contractors or employees. In no event shall DAS be liable to Client for direct, indirect, incidental or consequential damages, it being understood and agreed that Client hereby expressly waives any and all claims against DAS for any loss, cost, damages or liability that may be incurred by Client as a result of DAS’ acts or failures to act hereunder.**
- 45) **Telehealth** – if the executed COF includes Telehealth services in any form, the following additional terms and conditions apply:
- a) Subject to the terms and conditions contained in this Agreement and the agreement between DAS and its telehealth vendor, DrFirst, DAS hereby grants to Client: (i) a limited non-exclusive, non-transferable, right to access the Application during the Term, either standalone or through DAS vendor Software within the United States of America.
 - b) Client shall not: (i) copy or duplicate the Application; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or decipher the source code from which any component of the Application is compiled or interpreted, and Client acknowledges that nothing in this Agreement will be construed to grant Client any right to obtain or use such source code; (iii) modify the Application, the Application Documentation, or the DrFirst Brand or create any derivative product from any of the foregoing; (iv) act as a service bureau of the Application or otherwise run the Application for any-third party; (v) use the Application for performing comparisons or other benchmarking activities, either alone or in connection with any other product or service; (vi) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Client’s rights under the licenses granted herein.
 - c) Client warrants and represents that it has ensured that it has obtained all legally necessary consent from its patients and any other customers permitting the access, sharing and exchange of patient records through the Telehealth application.
 - d) The DrFirst Terms of Use (“TOU”), is available at <https://www.drfirst.com/backline-terms-of-use/>, and is specifically incorporated by reference and made a part of this Agreement.
- 46) **Other Products and Services**
- a) **Dr-DASH!** – All DAS clients are eligible to have the Dr-DASH! business intelligence dashboard at no additional charge if and when it has been developed for their PM/EHR system. If Client accesses the Dr-DASH! services, Client agrees to be bound by the *Dr-DASH! Master Subscription Agreement Terms of Service*, as available at <https://DAShealth.com/documents>.
 - b) **Docsnk** - If the executed COF includes Docsnk in any form, the following additional terms and conditions apply:
 - i) “Software” shall mean the software-as-a-service platform of Docsnk, LLC as made available by DAS.
 - ii) The Docsnk End User License Agreement (EULA), is available at <https://DAShealth.com/documents>, and is specifically incorporated by reference and made a part of this Agreement.
 - iii) All of the rights, limitations on, and protections, but not any obligations or responsibilities, of the Licensor under the Docsnk EULA shall apply equally to DAS. DAS shall be considered a Licensor Indemnitee under the EULA.
 - c) **FaxitMD** - If the executed COF includes FaxitMD in any form, the following additional terms and conditions apply:
 - i) Encryption and data protection of all fax images stored within the Client’s system(s) or software are the sole responsibility of Client.
 - ii) Fax images will be transmitted in a HIPAA secure manner, and will not otherwise be kept or maintained by DAS.

- d) **SIMPLE™ products** – If the executed COF includes any of the SIMPLE products (including but not limited to SIMPLE 837, SIMPLE ERA, SIMPLE EPS, SIMPLE SCAN) in any form, the following additional terms and conditions apply:
- i) If the SIMPLE product is listed as a non-recurring charge, then the product applies only to the then current version of software, includes no maintenance or support after installation, and must be repurchased for any underlying software (Medisoft, Lytec, etc.) upgrades to which it applies. SIMPLE upgrades do not include any upgrades of the underlying software, which must be purchased separately.
 - i) If the SIMPLE product is listed as a recurring charge (MSC), then the product includes ongoing Maintenance and support for so long as such MSC payments are current, including updates as applicable to any underlying software (Medisoft, Lytec, etc.) upgrades to which it applies. SIMPLE MSC does not include any upgrades of the underlying software, which must be purchased separately.
 - ii) Any SIMPLE software upgrades, if and when introduced, are not included in Maintenance, and must be purchased separately.
- e) **Text Reminder** – if the executed COF includes DAS Text Reminder services in any form, the following additional terms and conditions apply:
- i) Client is solely responsible for the information or content submitted, posted, transmitted or made available through Client’s use of the Services. Client may use the Services to transmit personalized wording and language (“Messages”) or direct DAS to make contacts via any channel to, or with, Client’s customers, partners, or other recipients (the “Recipients”). Client is responsible for maintaining the confidentiality of Client’s accounts and owner numbers and necessary codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with Client’s accounts whether or not authorized by Client including unintended usage due to holidays, daylight savings, computer clock errors or similar circumstances. Client acknowledges and agrees that DAS does not control nor monitor Client’s Messages nor guarantee the accuracy, integrity, security or quality of such Messages. Use of recording or taping any use of the Services by Client may subject Client to laws or regulations and Client is solely responsible for and obligated to provide any required notification to those being recorded or taped. Client represents and warrants that: (a) Client is solely responsible for Messages; (b) Client has the legal right to use and send all Messages to the Recipients; (c) the timing and purpose of all Messages, campaigns and programs are in compliance with all applicable laws, rules and regulations; (d) DAS’s use of the Messages as directed shall not violate the rights of any third party or any law, rules or regulation.
 - ii) Client obtained prior express consent to contact each wireless phone number Client has delivered to DAS in connection with the provision of any Services delivering a prerecorded or text message (“Notification Services”) and the intended contact Recipient is the current subscriber to, or the non-subscriber customary user of, the wireless phone number. Upon request, Client shall provide reasonable proof of compliance with the provisions set forth in this section and DAS shall have no obligation to provide Services where DAS reasonably believes that Client has not so complied.
 - iii) If the Messages are initiated to induce the purchase of goods or services or to solicit a charitable contribution (“Solicitations”), Client has incorporated an interactive opt-out mechanism as part of the program;
 - iv) Client has, unless an exemption applies, obtained from the Recipient of any Solicitation an express written agreement that meets the requirements set forth in Section 310.4(b)(1)(v)(A) of the FTC’s Telemarketing Sales Rule and Section 64.1200(f)(8) of the FCC’s Telephone Consumer Protection Act Rules; and
 - v) The Parties agree that, where DAS reasonably believes Client may not have complied with the provisions of this Section or with all laws, rules and regulations, DAS may, at its option (i) scrub all numbers against any appropriate data base deemed necessary to remove all wireless phone numbers and promptly notify Client of such action, (ii) insert an interactive opt-out mechanism and pass the resulting data to Client, and/or (iii) temporarily suspend Services related to the compliance concern.
 - vi) Client shall indemnify, defend and hold DAS, its Affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys’ fees and expenses) arising out of or resulting from DAS following Client’s instructions in sending the Messages or Client’s breach of any representation and warranty set forth in this Section.

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