

DAS Software End User License Agreement

Introduction This is an Agreement (“Software License”), between, DAS Health Ventures, LLC, (“DAS”), which is the owner or licensee of certain computer software, and Client, as identified in the Program Agreement, Statement of Work and/or Client Order Form (collectively or individually “Agreement”), for the purpose of specifying the conditions under which Client will use the Software.

The DAS Standard Incorporated Terms and Conditions, available at <https://DAShealth.com/documents> (“DAS T&C”), as may be modified from time to time, is hereby made a part of the Software License.

Definitions

“DAS Software” means that initial DAS software licensed by Client from DAS, as set forth in any Agreements, as defined in the DAS T&C and, provided Client is contracted for Software Maintenance Services, and as subsequently modified by any Update released by DAS. DAS Software, as defined in the DAS T&C, shall include but is not limited to executable code, stored procedures, data transformation logic, queries, templates, reports and/or database schemas provided by DAS to Client under this Software License. DAS Software may include associated media, printed materials, and “online” or electronic documentation and modules. This Software License applies to **ChartGuard™, ChartGuard OnDemand™, ChartGuard Archiver™, RefundManager™, Unapplied & Deposit Manager™, Multiple Encounter BillingManager™, System Archiver, and other Software that is acquired, owned or licensed by DAS, not including any Third Party Software.**

“Enterprise” shall mean one or more Practices implemented within a single database running on a single server sharing a single enterprise identifier.

“Third Party Software” shall mean software included in DAS Software which is separately licensed by entities other than DAS and sold to Client by DAS.

“License Level” shall mean the licensing grants and restrictions based upon the level of license purchased. This applies to **ChartGuard™, ChartGuard OnDemand™, RefundManager™, Unapplied & Deposit Manager™, and Multiple Encounter BillingManager™.** License Level is selected from Standard, Professional, and Enterprise.

License Levels for ChartGuard™ and ChartGuard OnDemand™

- a. “Standard License” shall grant a license to a single Client with up to two (2) Providers in one (1) Practice and up to 100 Patient Chart PDF files generated daily. Includes one (1) ChartGuard Engine.
- b. “Professional License” shall grant a license to a single Client with up to 100 Providers in one (1) Practice and up to 1000 Patient Chart PDF files generated daily. Includes two (2) ChartGuard Engines to provide redundancy and increase throughput.
- c. “Practice Add On License” shall extend a Professional license to allow one (1) additional Practice per License so long as aggregate Provider count is 100 or fewer.
- d. “Enterprise License” shall grant a license to a single Client with more than 100 providers in one (1) practice or any number of practices and providers in one (1) enterprise. Total Patients seen per day will be limited by the capacity of the three (3) ChartGuard Engines included.

“ChartGuard Engine Add On” shall extend the number of ChartGuard Engines by one (1) for each License to extend a Professional License or Enterprise License. This will provide more redundancy and increase throughput.

License Levels for RefundManager™, Unapplied & Deposit Manager™, and Multiple Encounter BillingManager™

- a. “Standard License” shall grant a license to a single Client with up to two (2) Providers in one (1) Practice.
- b. “Professional License” shall grant a license to a single Client with up to 100 Providers in one (1) Practice.
- c. “Practice Add On License” shall extend a Professional license to allow one (1) additional Practice per License so long as aggregate Provider count is 100 or fewer.
- d. “Enterprise License” shall grant a license to a single Client with more than 100 providers in one (1) practice or any number of practices and providers in one (1) Enterprise.

“ChartGuard Engine” refers to the backend application which uses clinical data, files, and images, to assemble a PDF file for each patient of their clinical chart. A single ChartGuard Engine is required as a minimum configuration for any ChartGuard product. Processing can be scaled by adding additional ChartGuard Engines. Having more than one ChartGuard Engine can also increase redundancy. Each ChartGuard Engine runs on a virtual or physical server provided by the Client’s Information Technology provider.

All other terms, not specifically defined here, shall incorporate the definition set forth in the DAS T&C.

License Grant

DAS has the right to grant and hereby grants to Client, and Client hereby accepts, subject to the terms and conditions set forth in this Software License, a non-exclusive and nontransferable License to use the DAS Software as set forth in this Software License. The term "License" as used in this Software License shall mean and include, subject to Client's adherence to its respective License Level:

- a. the right to use the licensed copies of the DAS Software in executable form for internal operations on CPUs owned or operated by Client, for a maximum number of Users, Workstations, Providers, Practices and/or Enterprises as specified in any Agreement; and
- b. the right to make backup copies of the DAS Software

In accepting the license granted by DAS, Client agrees that it shall not:

- i. transfer or allow the transfer of copies of the DAS Software;
- ii. use the DAS Software on CPUs at locations other than the Licensed Locations; or
- iii. attempt to disassemble, decompile, or reverse engineer the object code portions of the DAS Software; or
- iv. transfer, disseminate, distribute, or create derivative works of the source code, queries, or database schema portions of the DAS Software.

DAS retains title and all ownership rights to the DAS Software. Any rights not expressly granted to Client are retained and reserved by DAS.

Third-Party Software License Requirements

Any Third-Party Software specified in any Agreement is limited to use only with the DAS Software. Without limiting the foregoing, Client may not use any of the Third-Party Software or any third-party programming language tools or products to create additional applications designed to be used with the Third-Party Software.

Delivery

DAS shall deliver to Client a master copy of the DAS Software licensed hereunder in object code form, suitable for reproduction, in electronic files only. DAS may also deliver copies of currently available documentation.

Modifications

Client may, from time to time, request that DAS incorporate certain features, enhancements or modifications into the DAS Software. DAS may, at its sole discretion, undertake to incorporate such changes and distribute the DAS Software so modified to all or any of DAS' Clients. All such error corrections, bug fixes, patches, updates or other modifications shall be the sole property of DAS.

Copies

Except as specifically set forth herein, no DAS Software or supporting documentation which is provided by DAS pursuant to this Software License in human readable form, such as written or printed documents, shall be copied in whole or in part by Client without DAS' prior written consent. Additional copies of printed materials may be obtained from DAS at the charges then in effect. In addition, except as specifically set forth herein, any DAS Software provided in machine readable form may not be copied by Client in whole or in part, except for Client's backup or archive purposes. Client agrees to maintain appropriate records of the number and location of all copies of the DAS Software and make such records available upon DAS' request. Client further agrees to reproduce all copyright and other proprietary notices on all copies of the DAS Software in the same form and manner that such copyright and other proprietary notices are originally included on the DAS Software.

Software Maintenance

DAS shall make available to Client all published updates and enhancements to the DAS Software during the Term of this Software License, while Client is in good standing and current with its monthly maintenance or subscription obligation as specified in Agreement. Use of all such updates and enhancements by Client shall be subject to the terms and conditions of this Software License.

Services

DAS shall make available to Client the Services described in the Agreement, provided however only if such Services are specifically included in the Agreement and Client is current on any payments for such Services. Services may include installation, customization, and training.

Term of License

The term of this Software License shall be as set forth in the Agreement.

Termination of Software License

This obligation and the provisions regarding Copyright and Proprietary Information, Ownership, Confidentiality, Limitation of Warranties, Indemnification, and the General shall survive the termination of this Software License.

Copyright and Proprietary Information

Client acknowledges that the DAS Software and other supporting documentation constitute valuable property of DAS and that all title and ownership rights in the DAS Software and related materials remain exclusively with DAS. DAS reserves all rights with respect to the DAS Software and other supporting documentation under all applicable laws for the protection of proprietary information, including, but not limited to, trade secrets, copyrights, trademarks and patents. Except as otherwise provided in the Agreement, Client shall not cause or permit unauthorized copying, reproduction or disclosure of any portion of the program, or any instructions, manuals, or other documentation, or the delivery or distribution of any part thereof to any third person or entity, for any purpose whatsoever, without the prior written permission of DAS.

Ownership

Client acknowledges that DAS or its third-party suppliers own all rights, title and interest in the Software, including but not limited to all copyrights, trade secrets, and confidential and proprietary rights therein. Client also acknowledges that the Software contains confidential and proprietary information and trade secrets belonging to DAS and/or its third-party suppliers, and that nothing herein gives Client any right, title or interest in the DAS Software except for Client's limited express rights pursuant the License Grant.

Confidentiality

Client may have access to information that is confidential to DAS ("Confidential Information") during the term of this Software License and the Agreement. Confidential Information shall be limited to the DAS Software and any other information disclosed by DAS to Client is either identified as or should be reasonably understood to be confidential and/or proprietary. With respect to Client's obligations under this provision to protect the Confidential Information embodied in the DAS Software, such obligations shall continue indefinitely. Otherwise, during the term of this Software License and for a period of two (2) years thereafter, Client shall hold the Confidential Information in confidence and shall not disclose the Confidential Information to a third party. Client shall use the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Client uses to protect its own confidential information of a like nature. Client shall not use the Confidential Information for any purpose other than as necessary to exercise the license granted under this Software License. Client shall not disclose the results of any benchmark tests run on the DAS Software without DAS's prior written consent.

Client acknowledges that the unauthorized use, transfer or disclosure of the DAS Software and documentation or copies thereof will (i) substantially diminish the value to DAS of the trade secrets and other proprietary interests that are the subject of this Software License; (ii) render DAS' remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If Client breaches any of its obligations with respect to the use or confidentiality of the DAS Software or documentation, DAS shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.

The Business Associate Agreement ("BAA"), available at <https://DAShealth.com/documents>, as may be modified from time to time consistent with federal and state law, is hereby made a part of the Agreement.

DAS Software License Warranties

DAS grants to Client a limited warranty from the Installation Date until sixty (60) days after the DAS Software is initially used by the Client in a live, production environment ("Warranty Period") as follows: that the DAS Software,

unless modified by or on Client's behalf, will substantially perform the material functions described in the documentation when operated on the Authorized Computer System in accordance with the documentation (the "Express Warranty"). DAS does not warrant that the DAS Software will meet the Client's requirements except as provided in the documentation, that the DAS Software will operate in the combinations which Client may select for use, that the operation of the DAS Software will be uninterrupted or error-free, or that all errors will be corrected. Except for the Express Warranty during the Warranty Period, the DAS Software is provided "AS IS." For any breach of the Express Warranty, Client's sole and exclusive remedy, and DAS' entire liability and obligation shall be, at DAS' election, to repair or replace the non-performing DAS Software or refund all or a portion of any license fees paid by Client to DAS in the previous twelve (12) month period.

Limitation of Warranties

CLIENT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL DAS OR ANY OF DAS' OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL, LOST PROFITS, LOST DATA OR LOST OPPORTUNITIES, IN ANY WAY RELATING TO THIS SOFTWARE LICENSE OR RESULTING FROM THE USE OF OR INABILITY TO USE THE DAS SOFTWARE OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY HARDWARE, THIRD-PARTY SOFTWARE AND/OR SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF DAS HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

IN THE EVENT THAT THE DAS SOFTWARE OR ANY REPORT OR INFORMATION GENERATED BY THE DAS SOFTWARE IS USED IN CONNECTION WITH ANY DIAGNOSIS OR TREATMENT BY CLIENT AND/OR ANY OF CLIENT EMPLOYEES, AGENTS, REPRESENTATIVES, AND THE LIKE, CLIENT AGREE TO ACCEPT ALL RESPONSIBILITY IN CONNECTION THEREWITH, INCLUDING RESPONSIBILITY FOR INJURY, DAMAGE AND/OR LOSS RELATED TO SUCH DIAGNOSIS OR TREATMENT, IRRESPECTIVE OF WHETHER SUCH INJURY, DAMAGE AND/OR LOSS RESULTS FROM CLIENT USE OF THE DAS SOFTWARE.

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Indemnification

Client shall indemnify and defend DAS against any and all claims, including claims by third parties or employees of Client, including reasonable attorney's fees, which arise directly or indirectly out of Client's use or operation of the DAS Software. DAS shall not be liable for any incidental or consequential damages suffered by Client through the use of the DAS Software, whether or not such damages were disclosed to, or reasonably foreseen.

IN NO EVENT WILL DAS' LIABILITY IN THE AGGREGATE FOR ANY DAMAGES FOR ANY MATTER ARISING UNDER THIS AGREEMENT EVER EXCEED THE DAS SOFTWARE LICENSE FEES PAID BY CLIENT TO DAS HEREUNDER DURING THE PRIOR TWELVE CALENDAR MONTHS, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

General

This Agreement will be governed by the laws of the State of Florida. This Agreement may only be modified by a written document which has been signed by authorized signatories of both parties.