

**HEALTHXL CHRONIC CARE MANAGEMENT TERMS OF SERVICE
AND END USER LICENSE AGREEMENT (“EULA”)
Effective January 1, 2019**

These HealthXL Chronic Care Management Terms of Service and End User License Agreement (“EULA”) apply to the Services provided by HealthXL, LLC (f/k/a LinkedMD, LLC), a Michigan limited liability company (together with its affiliates and subsidiaries, “Company”). The Client is as named on the applicable Program Agreement and/or Order Form (“Client”). DAS Health Ventures, Inc. (together with its subsidiaries and affiliates “DAS”) is an authorized reseller of the Services. The Client, Company, and DAS is each a “Party,” and collectively, are referred to as the “Parties”. All rights, but not obligations, of the Company shall apply equally to both Company and DAS; DAS will use its reasonable commercial efforts to facilitate the provision of Company’s obligations hereunder, but is not responsible for such obligations.

Now, therefore, Client and Company hereby agree as follows:

1. **Definitions.** As used in this agreement, the following capitalized terms have the meanings set forth in this Section. Other capitalized terms used in this Agreement may be defined in the context in which they are first used.
 - a. **“Business Associate Agreement”** means the Business Associate Agreement entered into by Client and DAS.
 - b. **“Confidential Information”** means any information disclosed by any party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents and information), which is designated as “confidential,” “proprietary” or some similar designation or which a party should reasonably know is confidential.
 - c. **“Documentation”** means any and all printed or tangible materials, such as training manuals, Company documentation, user instructions, feature/function capability descriptions, release notes, and other similar materials relating to the Services, as delivered to Client by Company in connection with the Services.
 - d. **“Services”** means the services as outlined in the Agreement and in Section 2 below. Client and Company both acknowledge that each will expend the necessary effort to assure that the Chronic Care Management (CCM) services are of high quality and delivered in accordance with the Centers for Medicare & Medicaid Services (CMS) guidelines with respect to CPT Code 99490.
2. **Services and Responsibilities.**
 - a. **Primary Service.** Company will generate all Enrollment Documentation and shall perform its CCM Program’s services, including 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.

- 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. Quality Assurance. Company’s services shall be continually monitored by its in-house Medical Director (a retired physician) to ensure the highest quality.
- e. Account Services. Company shall assign an experienced, industry- credentialed account manager to serve as Client’s direct service contact. The account manager 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 received 20+ minutes of CCM services, which will assist Client’s billing staff or service in billing CMS.
- f. Client’s Responsibilities.
 - 1. Client shall give Company access to its EHR system so that Company can identify all of Client’s Medicare patients who qualify for CCM services under CPT Code 99490 (i.e., having two 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).
 - 2. 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.
 - 3. Client will bill CMS monthly for the CCM services rendered by Company.
 - 4. Though Company employs a physician as Medical Director, 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. With regard to EMR 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 2011 or 2014 certification criteria for its EHR Incentive Program. Your EHR system must therefore continue to:
 - 1. Include patient demographics, problem list, medication list, and medication allergy list [consistent with 45 CFR 170.314(a)(3)-(7)]
 - 2. Allow for the creation of a structured clinical summary record [consistent with 45 CFR 170.314(e)(2)]
 - 3. Allow provider to transmit the Care Coordination Document for purposes of care coordination

4. House the patient's consent for participation in the CCM Program
 5. House the patient receipt of care plan (electronic/hard copy)
 6. Document communications to and from home and community-based providers
- h. Proprietary Rights and Confidentiality.** The Services (and manner in which they are performed) are owned by Company and are protected by copyright, trademark, patent and/or trade secret laws. Client will take all steps necessary to protect Company's proprietary rights, including, but not limited to, the proper display of proprietary notices on any copies thereof. Client will not: use for the benefit of nor disclose the Services to third parties, use the trademarks or service marks belonging to Company or its licensors, issue any press release or make any public statement relating to the subject matter of this agreement, or demonstrate the Services or any third party Services provided hereunder to a third party unless it has received the prior written consent of Company for each specific instance of any of the foregoing. All parties agree to refrain from any disparagement, defamation, libel, or slander of any other Party, its employees, officers, directors or shareholders, and each agrees to refrain from any unlawful interference with the contracts of the other Party.
- 3. Fees and Payments.**
- a. **Fees.** DAS shall invoice Client for all fees due, including third party fees, hardware, support and professional services fees, and Client shall pay all invoice amounts upon receipt to the billing party or at the times set forth in the applicable Sales Order. There shall be no additional charges for training, installation, or Company's creating and maintaining each patient's Care Coordination Document.
 - b. **Taxes.** All fees are exclusive of any sales, use, and other taxes and charges applicable to the licensing, installation, support, or use of the Services. Client agrees to pay when due (or reimburse Company/DAS for) all such taxes which Company or DAS is at any time obligated to pay or collect in connection with this Agreement, except any taxes based on Company's or DAS' net income, or provide Company or DAS with a certificate of exemption acceptable to the applicable taxing authority. Any delay by Company or DAS in collecting any such tax shall in no way release Client of its obligation under this Section.
- 4. Equipment Personnel and Availability of Facilities.** In order to continue to use the Services, Client shall, at its sole expense, purchase and maintain the minimum necessary computer equipment, telecommunication equipment, and EHR software required for the Services to operate, as set forth in Company's then current specifications as modified from time to time. The current minimum specifications are available to Client upon request. Client shall grant Company or DAS such access to its facilities as may be necessary or appropriate for Company or DAS to perform its Services under this Agreement. Each party agrees to indemnify and hold harmless the other party from any personal injury or damage to real or tangible personal property resulting from the gross negligence or intentional misconduct of the indemnifying party's employees or agents while they are at the premises of the other party.
- 5. Patient Information.** DAS and the Client have entered into, or will enter into, a Program Agreement and Business Associate Agreement, which together with these Terms of Service and

any Addendum, Exhibits and Sales Order(s) form the entire Agreement between the Client and DAS (and with respect to this EULA, the Company) (altogether, the “Agreement”). Company acknowledges Client’s or patient’s ownership of all individually identified patient data generated as a result of Client’s use of the Services. Notwithstanding the foregoing, the parties acknowledge and agree that Company and DAS may use, reproduce and distribute non-personally identifiable patient data stored or used in connection with the Services to the maximum extent permitted by applicable law and without compensation to Client.

6. **Representatives and Notices.** Each party agrees to designate a qualified person as representative to receive notices which are required to be in writing and delivered hereunder. All such notices hereunder shall be given by: (a) personal delivery; (b) United States Postal Service certified or registered mail, return receipt requested, postage prepaid; or (c) Federal Express, United Parcel Service, United States Postal Service or other commercial overnight delivery service (via a courier with the ability to track and confirm receipt). Notice shall be considered received on the date of actual receipt or addressee’s refusal to accept delivery if given in one of the methods set forth in (a), (b) or (c) above. The representative for each party may be changed from time-to-time by written notice to the other party given in accordance with the terms of this Section. Said representatives shall be as follows:

Company Representative:

CEO

Notice Address:

HealthXL, LLC

3109 W. Dr. Martin Luther King Jr. Blvd., Suite 121

Tampa, Florida 33607

With a Copy to DAS Representative:

DAS Health

Attn: CEO

Notice Address:

1000 N. Ashley Drive, Suite 300

Tampa, FL 33602

Client Representative:

The party named on the Program Agreement or Sales Order as Client Representative

Notice Address:

The address listed on the Program Agreement or Sales Order, as applicable

The parties may designate other individuals to receive communications related to the day-to-day operation of this Agreement.

7. **Warranties.**

Neither Company nor DAS warrants that the Services will meet Client's requirements or will be error-free. Should Client experience a rate of 10% or more in payment denials by CMS, it shall inform Company of the situation so that Company can perform an analysis to determine the reason and help arrive at a remedy. Client's sole and exclusive remedy in the event of any error made by Company, and Company's entire liability and obligation shall be, at Company's election, this stated warranty and/or to correct the Services at no additional charge to Client. If the foregoing alternative is not reasonably available, Company may, at its option and subject to any rights of DAS, terminate this Agreement and refund the Service Fees paid by Client to Company with respect to errors made, if any. The foregoing payment shall be made net of any outstanding balances. Client represents and warrants that: (i) the person signing on behalf of Client is authorized to bind Client and (ii) that Client will use the Services in accordance with all applicable law including, without limitation, the Health Information Portability and Accountability Act (HIPAA).

8. **Warranty Disclaimers.** OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 7, NEITHER COMPANY NOR DAS MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CLIENT OR ANY OTHER PARTY WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OF CONDITION OR MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE ALL EXPRESSLY EXCLUDED AND DISCLAIMED. NEITHER COMPANY NOR DAS PROVIDE ANY WARRANTY REGARDING ANY THIRD PARTY SOFTWARE AND/OR HARDWARE NOT PROVIDED BY COMPANY. CLIENT ACKNOWLEDGES AND AGREES THAT THE SERVICES MAY NOT BE RELIED UPON TO PERFORM MEDICAL DIAGNOSTIC FUNCTIONS OR TO SET TREATMENT PROCEDURES. WHEN USING THE SERVICES, CLIENT AND ITS AUTHORIZED USERS (E.G. EMPLOYEES) ARE SOLELY RESPONSIBLE FOR EXERCISING DUE CARE AND USING THEIR INDEPENDENT PROFESSIONAL JUDGMENT WITH REGARD TO PATIENT EXAMINATION, DIAGNOSIS AND TREATMENT. NEITHER COMPANY NOR DAS ASSUME ANY RESPONSIBILITY FOR CLIENT'S ACTIONS WHICH MAY RESULT IN ANY LIABILITY OR DAMAGES DUE TO MALPRACTICE, FAILURE TO WARN, NEGLIGENCE OR ANY OTHER BASIS.

9. **Allocation of Risk.** Client acknowledges that the limitations and disclaimers with respect to warranties, remedies, and damages set forth in this Agreement reflect an acceptable allocation of risk and are necessary and material terms in light of the prices offered by Company hereunder.

10. **Databases.** CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE SERVICES IS INTENDED TO SUPPLEMENT, NOT REPLACE, THE KNOWLEDGE, SKILL AND JUDGMENT OF HEALTHCARE PROFESSIONALS REGARDING PATIENT CARE, DRUG THERAPY PROBLEMS AND PATIENT COUNSELING INFORMATION, AND IS SOLELY FOR USE BY OR UNDER THE DIRECT SUPERVISION OF LICENSED HEALTHCARE PROFESSIONALS. CLIENT IS RESPONSIBLE FOR ENSURING THAT ITS AUTHORIZED USERS FOLLOW PROPER PROCEDURES REQUIRED BY LAW INCLUDING, WITHOUT

LIMITATION, HIPAA, AND BY GOOD PROFESSIONAL MEDICAL AND DATA HANDLING PRACTICE WITH REGARD TO THE FORM OF PATIENT RECORDS, THE CREATION AND STORAGE OF BACKUP COPIES OF COMPUTERIZED PATIENT RECORDS, CONSENTS TO TREAT OR DISCLOSE, AND USE AND RELEASE OF DATA. CLIENT IS RESPONSIBLE FOR IMPLEMENTING AND MAINTAINING ADEQUATE PROCEDURES AND CHECKPOINTS TO SATISFY ITS PARTICULAR REQUIREMENTS FOR ACCURACY OF DATA INPUT AND OUTPUT.

11. Third Party Claims.

- a. Subject to this Section 11, Company agrees to indemnify, defend, and hold harmless Client from and against any and all claims, losses, and damages, including reasonable attorney's fees (together "Losses"), asserted against Client alleging that the Services infringe upon a registered U.S. copyright or U.S. patent belonging to any third party. If such a claim is made or, in Company's opinion, is likely to be made, Company, at its option, may modify the Services, obtain rights for the Client to continue using the Services, or terminate the use of the Services at issue by the Client. Client agrees to abide by Company's decision and, if appropriate, use a different version of the Services or stop using the Services.
- b. Client agrees to indemnify and hold Company and DAS harmless from any and all Losses asserted against Company or DAS by any customer, patient, employee, or agent of Client or any other individual or entity who may be affected by Client's use of the Services, except, with respect to Company, to the extent that Company is responsible under Section 11(a) of this Agreement.
- c. In the event that any demand or claim is made or suit is commenced against a party ("Indemnitee") for which the other party has an indemnity obligation hereunder ("Indemnitor"), written notice of such shall be provided to Indemnitor by Indemnitee, and Indemnitee shall cooperate with Indemnitor in the defense of the demand, claim or suit to whatever reasonable extent Indemnitor requires, at Indemnitor's cost and expense and Indemnitor shall have the right to compromise such claim to the extent of its own interest and shall retain full control of the defense of any such suit.

12. Delay in Performance. Neither Company nor DAS shall be responsible for any failure to perform due to causes beyond Company's reasonable control, including but not limited to labor disputes, strikes, acts of God, fire, storm, water, delays in transportation, communication line failure, equipment failure, and governmental actions. Any delay beyond DAS or Company's reasonable control shall be excused and the period of performance extended as may be necessary to enable such party to perform after the cause of delay has been removed.

13. Limitation on Liability. EXCEPT FOR CLAIMS ARISING UNDER SECTION 11, THE TOTAL LIABILITY OF COMPANY AND DAS FOR ANY AND ALL CLAIMS IN ANY WAY RELATED TO THIS AGREEMENT, AND ANY PERFORMANCE OR NONPERFORMANCE BY COMPANY OR DAS HEREUNDER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF FEES PREVIOUSLY PAID TO COMPANY BY CLIENT WITHIN THE THREE (3) MONTH PERIOD PRIOR TO THE ASSERTION OF ANY SUCH CLAIM.

14. **Intentionally Left Blank.**
15. **Term and Termination.** This Agreement shall commence upon the earlier of the Go-Live Date, or on the date listed on the Program Agreement or Sales Order, and shall continue in full force and effect for the term of such Program Agreement or Sales Order, unless earlier terminated in accordance with the provisions of the Program Agreement.
16. **Governing Law, Injunctive Relief, Limitation on Actions.** This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the State of Florida, with the exclusive venue and jurisdiction in Tampa, Florida. Prior to filing any cause of action, or legal proceeding, with the requisite court of law, the parties agree that they will first be required to attend in-person mediation in Tampa, Florida. The parties agree that they will send a representative with full settlement authority to the mediation. The cost of the in-person mediation shall be split amongst the parties, but shall not include travel costs of either party associated with attending the in-person mediation. In the event that either party fails to comply with the dispute resolution procedure and files a cause of action or legal proceeding prior to a required mediation taking place; or in the event either party files any cause of action or legal proceeding in a court of law against the other party in a court of law other than a court of law in Tampa, Florida, the filing party agrees to pay the non-filing party's reasonable attorneys' fees and all costs and expenses incurred with respect to defending such improperly filed cause of action or legal proceeding. Notwithstanding the foregoing, because of the unique nature of the Services, Client understands and agrees that Company and DAS will suffer irreparable injury in the event Client fails to comply with any of the terms of this Agreement and that monetary damages may be inadequate to compensate Company and DAS for such breach. Accordingly, Client agrees that Company and DAS will, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief, without posting a bond, to enforce any threatened or actual breach of the terms of the Agreement. No claim or action arising out of this Agreement may be asserted by any party more than one year after such party knew or should have known that the cause of action has arisen; provided, however, this sentence shall not extend any applicable statute of limitations.
17. **Attorney's Fees.** If any party hereto incurs any legal fees, whether or not an action is instituted to enforce the terms of this Agreement or any Sales Order hereto, or to recover damages or injunctive relief for breach of this Agreement or any Sales Order hereto, it is agreed that the successful or prevailing party shall be entitled to reasonable attorney's fees, expert witness fees, and other costs in addition to any other relief to which it may be entitled.
18. **Entire Agreement, Construction, Modification.** This Agreement, including the Program Agreement, Addendum(s), Exhibit(s), Sales Order(s) and Business Associate Agreement, set forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements, written or oral, between the parties. In the event of an ambiguity or in the event a question of intent or interpretation arises, no presumptions or burdens of proof shall arise favoring any party as a result of the authorship of any of the provisions of this Agreement. The section headings in this Agreement are included only for purposes of convenient reference, and they shall not affect the interpretation of this

Agreement. This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of DAS and Client (and with respect to this EULA, Company). The terms and conditions of this Agreement and may be amended by mutually executed Addendums which reference this Agreement. In the event of a conflict between these Terms of Service, the Program Agreement, any Exhibits, Addendums, Sales Order(s) or Business Associate Agreement, the following order of precedence shall govern: the Program Agreement, Sales Order(s), Addendum(s), Exhibit(s) (newest first), the applicable Business Associate Agreement, and this EULA.

19. **Waiver.** Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.
20. **Effect of Invalid or Unenforceable Provision.** This Agreement, to the extent possible, shall be construed so as to give validity to all the provisions hereof. Any provision of this Agreement found to be invalid or unenforceable shall not affect the validity or enforceability of any other provision of this Agreement, and each provision of this Agreement shall be enforced to the fullest extent permitted by applicable law.
21. **Limitations on Assignment.** Client may not assign this Agreement to a third party without Company's prior written consent which will not be unreasonably withheld, but which may require execution of an assignment agreement by the third party. DAS or Company may assign this Agreement to a third party which is capable of performing the Company's obligations hereunder by providing written notice of such assignment to Client. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.
22. **Intentionally Left Blank.**
23. **Survival.** The terms and conditions contained in Sections 2, 3.b, 5, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19, 20, 21, 22 and 26 shall survive the completion of the performance, or the cancellation or termination, of this Agreement.
24. **Intentionally Left Blank.**
25. **Remote Access.** Client shall, at its own expense, maintain remote access high speed Internet communication capability, and provide Company licensed access to Client's EHR software. Remote access as described in this Section 25 will be provided in a form approved by Company, and that is consistent with industry standard. Remote access is not required to be used exclusively by Company and can be used for other purposes. Client agrees that Company or DAS may use such remote access to perform periodic audits to determine compliance with the terms of this Agreement, to send and receive reports, to provide Services, and for other purposes related to the performance of this Agreement. Client agrees that it will not use a firewall or other mechanism to prevent Company from accessing Client through such remote access.

26. **Acknowledgement.** Each party acknowledges that it has read this Agreement (including this EULA, the Program Agreement, Exhibit(s), Addendum(s), Sales Order(s), and the Business Associate Agreement), and understands it, and agrees to be bound by the terms and conditions of the Agreement. Exhibits, Schedules and the Business Associate Agreement are all available at <http://DAShealth.com/documents>. Client also agrees that this EULA is the complete and exclusive statement of the agreement between Company and Client and supersedes all proposals, representations or prior agreements, oral or written, and any other communications between Company and Client relating to the subject matter of this Agreement. The Program Agreement, including the DAS Standard Incorporated Terms & Conditions, shall take precedence in the event of any conflict between the documents. This EULA may not be amended, except as provided herein or by the Program Agreement as amended from time to time.