

# Help Me DAS™

## Master Subscription and License Agreement

### Terms of Service v1.1

Effective as of August, 2008

BY CLICKING "I ACCEPT", YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF DAS' SERVICE, INCLUDING ONLINE AND OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE"). IF YOU ARE THE FIRST PERSON IN YOUR COMPANY TO AGREE TO THESE TERMS, THEN YOU ARE THE LICENSE ADMINISTRATOR (AS DEFINED HEREIN), AND YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF BOTH YOURSELF AND SUCH COMPANY OR OTHER LEGAL ENTITY. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, AND THE TERMS "YOU" OR "YOUR" SHALL REFER TO BOTH YOU INDIVIDUALLY AND SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT "I DECLINE" AND MAY NOT USE THE SERVICE.

As part of the Service, DAS may provide you with use of the Service, including consulting services, a browser interface, data access and transmission. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the DAS website incorporated by reference herein, including but not limited to DAS' privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

**1. License Grant & Restrictions.** DAS hereby grants you a non-exclusive, non-transferable, right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by DAS and its licensors. You may not access the Service if you are a direct competitor of DAS, or for any competitive purposes, except with DAS' prior written consent.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users no longer using the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

**2. Your Responsibilities.** You are responsible for all activity occurring under your User account and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify DAS immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to DAS immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another user or provide false identity information to gain access to or use the Service. If you are the License Administrator, then you also have additional specific responsibilities, including ensuring accurate billing information and designating additional Administrators and other Users,

**3. Account Information and Data.** DAS does not collect any Protected Health Information ("PHI") as that term is defined in 45 CFR Part 164.501, and does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). To the extent that any PHI is shared with DAS, its use is governed by the current version of the DAS HIPAA Business Associate Agreement,

which may be found on the DAS website. You, not DAS, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data.

**4. Materials Provided to DAS or Posted at any DAS Web Site.** DAS does not claim ownership of the materials you provide to DAS (including feedback and suggestions) or post, upload, input or submit to any DAS Web Site or its associated services (collectively "Submission"). However, by posting, uploading, inputting, providing or submitting your Submission you are granting DAS, its affiliated companies and necessary sublicensees permission to use your Submission in connection with the operation of its Internet businesses including, without limitation, the rights to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat your Submission; and to publish your name in connection with your Submission. No compensation will be paid with respect to the use of your Submission, as provided herein. DAS is under no obligation to post or use any Submission you may provide and may remove any Submission at any time in DAS' sole discretion. By posting, uploading, inputting, providing or submitting your Submission you warrant and represent that you own or otherwise control all of the rights to your Submission as described in this section including, without limitation, all the rights necessary for you to provide, post, upload, input or submit the Submissions.

**5. Intellectual Property Ownership.** DAS alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the DAS Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the DAS Technology or the Intellectual Property Rights owned by DAS. The DAS name, the DAS logo, and the product names associated with the Service are trademarks of DAS or third parties, and no right or license is granted to use them.

**6. Privacy & Security; Disclosure.** DAS' privacy and security policies may be viewed at <http://www.HelpMeDAS.com>, which may be modified by DAS in its reasonable discretion from time to time.

**7. Charges and Payment of Fees.** Your company shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Fees are billable in minimum 15 minute increments. DAS reserves the right to modify its fees and charges and to introduce new charges at any time. Your issue may require on-site assistance; in this event, travel time is billable time, and travel expenses are billed as additional expenses. Unless your License Administrator agreed in advance to the HMD Subscription Plan and all payments hereunder are current, all billable time is at the then current Standard HMD Rate.

If your License Administrator agreed to the HMD Subscription Plan option and all payments are current, then the first two (2) hours of time during any calendar month covered under such Subscription Plan will be at no additional charge, and all additional time will be billed at the then current HMD Discount Rate. All billable time under the HMD Subscription Plan will be first credited to the current month's free time under that plan. If you have multiple Subscription Plans, all available free time under the cumulative plans will be used before any additional charges will apply.

All charges will be billed and, if applicable, automatically deducted from your account on the first business day of each calendar month. Such amounts will include your Subscription Plan fee (if applicable) in advance, and all other HMD fees for the prior month.

**8. Billing and Renewal.** If you are the License Administrator, you agree to provide DAS with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, DAS reserves the right to terminate your access to the Service in addition to any other legal remedies. If you believe your bill is incorrect, you must contact us in writing within 10 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

**9. Non-Payment and Suspension.** In addition to any other rights granted to DAS herein, DAS reserves the right to suspend or terminate your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection, including but not limited to attorney fees. If you or DAS initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that DAS may charge such unpaid fees to your credit card, bank account, or otherwise bill you for such unpaid fees.

10. **Term.** This Agreement commences on the Effective Date. If the HMD Subscription Plan is elected, then the Initial Term is for twelve (12) months. Otherwise, the Initial Term is for one (1) month. All renewal terms are month-to-month. Either party may terminate this Agreement without cause upon providing the other party with thirty (30) days notice prior to the end of any term.

- a. **30 Day Trial.** Even if the HMD Subscription Plan is elected, you may still cancel this Agreement without penalty or continuing liability for the remainder of the unused term at any time during the first thirty (30) days of the Agreement, however any charges incurred prior to termination are still due and payable pursuant to the terms of this Agreement.

11. **Termination for Cause.** Any breach of your payment or other obligations, or unauthorized use of the DAS Technology or Service, will be deemed a material breach of this Agreement. DAS, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement.

12. **Third Party Interactions.** To keep costs low, DAS may use Customer Data for the purposes of aggregated data compilation and targeted advertising. You may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. DAS and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. DAS does not endorse any sites on the Internet that are linked through the Service. DAS provides these links to you only as a matter of convenience, and in no event shall DAS or its licensors be responsible for any content, products, or other materials on or available from such sites. DAS provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

13. **Representations & Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service, that your billing information is correct, and that you will abide by the terms of this Agreement. DAS represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof. During the course of providing Service(s), DAS technicians may request to log on to your practice management, EMR or other system(s). We will not alter any settings or data, but may instruct you to do so. We will use commercially reasonable efforts to resolve your system or user-based issue(s), but cannot guarantee any results, or that such instructions may not cause additional or alternative problems.

14. **Indemnification.** You shall indemnify and hold DAS, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that DAS (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release DAS of all liability and such settlement does not affect DAS' business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

14. **Disclaimer of Warranties.** DAS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. DAS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED,

STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY DAS AND ITS LICENSORS.

**15. Internet Delays.** DAS' SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DAS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**16. Limitation of Liability.** IN NO EVENT SHALL DAS' AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY YOU UNDER THIS AGREEMENT DURING THE MONTH IN WHICH THE CLAIM AROSE. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**17. Notice.** DAS may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in DAS' account information, or by written communication sent by first class mail or pre-paid post to your address on record in DAS' account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 24 business hours after sending (if sent by email or electronic posting). You may give notice to DAS (such notice shall be deemed given when received by DAS) at any time by any of the following: letter sent by confirmed facsimile to DAS at the following fax number: (813) 774-9900; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to DAS at the following address: Doctors' Administrative Solutions, LLC., P.O. Box 1275, Tampa, FL 33601, addressed to the attention of: President.

**18. Modification to Terms.** DAS reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

**19. Assignment; Change in Control.** This Agreement may not be assigned by you without the prior written approval of DAS but may be assigned by DAS without your consent.

**20. General.** This Agreement shall be governed by Florida law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Tampa, Florida. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and DAS as a result of this agreement or use of the Service. The failure of DAS to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by DAS in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and DAS and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. DAS shall be entitled to use your name in marketing literature that advertises that you are a DAS customer.

**21. Definitions.** As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Administrator" has the same meaning as "License Administrator" below; "Agreement" means these online terms of use, any Order Forms, whether written or submitted via online application, and any materials available on the DAS website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by DAS from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or

submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of the first day of the month when either (a) this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed or (b) the date you begin using the Service; "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "You" and "Your" mean the legal entity identified on the Order Form; "DAS" means Doctors' Administrative Solutions, LLC., a Florida Limited Liability Company. "DAS Technology" means all of DAS' proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by DAS in providing the Service; "Service(s)" means the specific edition of DAS' online Help Center, or other services identified during the ordering process, developed, operated, and maintained by DAS, accessible via <http://www.HelpMeDAS.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by DAS, to which you are being granted access under this Agreement, including the DAS Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by DAS at your request).

### **Questions or Additional Information:**

If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to [support@HelpMeDAS.com](mailto:support@HelpMeDAS.com).