

PURCHASE ORDER TERMS & CONDITIONS

1. **Definitions.** “Confidential Information” means any information or materials disclosed or made available by or on behalf of DaVita to Supplier or Supplier Personnel that (a) is, at the time of disclosure, marked or identified in writing as confidential or proprietary information; (b) includes information regarding DaVita’s intellectual property, business, business plans, technology, strategy, operations, finances, sales, supply chain, transactions, patients, databases, or customers; or (c) by its nature or circumstances should reasonably be considered to be confidential. “DaVita” means DaVita Inc. or its affiliate as listed on the Purchase Order. “Definitive Agreement” means an existing written agreement between DaVita and Supplier, other than an existing purchase order, governing the purchase and supply of Products and/or Services. “Personnel” means Supplier employees, agents and/or subcontractors performing Services or providing Products under these Terms. “Products” means those goods identified on the Purchase Order to be supplied by Supplier to DaVita. “Purchase Order” means the purchase order issued by DaVita to Supplier for the purchase of Products and/or Services. “Services” means those services identified on the Purchase Order to be performed by Supplier, including any deliverables or work product. “Supplier” means the party to whom the Purchase Order is addressed. “Terms” means these Purchase Order Terms & Conditions together with the Purchase Order.
2. **Applicability.** These Terms set forth the terms and conditions upon which DaVita shall purchase from Supplier and Supplier shall sell to DaVita those certain Products and/or Services as identified in the applicable Purchase Order. If the parties have entered into a Definitive Agreement governing the purchase of such Products and/or Services, the terms and conditions of the Definitive Agreement shall take precedence over these Terms in the event of a direct conflict.
3. **Offer & Acceptance.** The Purchase Order is an offer by DaVita to purchase from Supplier those Products and/or Services identified herein and becomes a binding contract on the terms and conditions set forth herein when accepted by Supplier. The Purchase Order shall be deemed accepted by Supplier two (2) business days following Purchase Order .
4. **Cancellation.** DaVita may cancel the Purchase Order, in whole or in part: (a) with or without cause, upon ten (10) days’ prior written notice to Supplier; (b) if Supplier materially breaches these Terms and does not cure such breach within ten (10) days of receipt of DaVita’s notice describing the breach; or (c) if, with respect to Products only, the Products have not shipped as of the date of DaVita’s notice of cancellation to Supplier.
5. **Price & Payment**
 - 5.1 Supplier shall make available to DaVita the Products and/or Services, as applicable, at the prices and in such quantities as set forth in the Purchase Order. No Products and/or Services may be provided by Supplier without first having received a Purchase Order.
 - 5.2 Supplier shall invoice DaVita for all Product and/or Service purchases under these Terms pursuant to DaVita’s then-current invoicing requirements, one hundred percent (100%) at the end of each calendar month. If an invoice does not match the Purchase Order or meet DaVita’s then-current invoice requirements (including, without limitation, a reference to the applicable Purchase Order number), then DaVita shall have the right to reject such invoice and request resubmission by Supplier, and the payment term set forth in Section 5.3 shall be tolled until a correct invoice has been received by DaVita. Notwithstanding the foregoing, no invoice will be paid or payable by DaVita if (a) Supplier does not receive a Purchase Order from DaVita prior to shipping the Products or commencing performance of the Services, or (b) Supplier submits the invoice to DaVita more than sixty (60) days following the date the Products are delivered or the Services are rendered.
 - 5.3 DaVita shall pay all undisputed invoices within sixty (60) days from the date of receipt of Supplier’s invoice by DaVita’s Accounts Payable Department. If DaVita disputes any invoiced charges or costs, it shall notify Supplier and shall be entitled to withhold the disputed invoice from payments otherwise due until

resolution of the dispute. Payment by DaVita shall not imply acceptance by DaVita of the Product and/or Service or any component thereof.

5.4 If Supplier charges DaVita a price higher than that stated in the Purchase Order, Supplier shall promptly issue DaVita a refund or credit in the amount of such overcharge/overpayment following discovery by Supplier, or upon receipt of notice thereof from DaVita, but in no event later than thirty (30) days following any such notice. If Supplier charges DaVita a price lower than that stated in the Purchase Order, DaVita shall have no obligation to pay the amount of such undercharge to Supplier, nor shall Supplier have the right to set-off the undercharge against any amounts owed or due to DaVita unless Supplier submits a corrected invoice for such undercharged amounts within thirty (30) days after the month in which the Products were delivered or the Services were performed, as applicable.

5.5 Supplier shall be solely liable for any taxes of Supplier that Supplier is legally obligated to pay (including, without limitation, net income or gross receipts, franchise taxes, and property taxes) which are incurred or arise in connection with the Purchase Order or the Products and/or Services thereunder. DaVita shall pay to Supplier, and Supplier shall pay to the appropriate taxing jurisdiction, any sales, use or value added taxes that are owed by DaVita solely as a result of purchasing the Products and/or Services and which are legally required to be collected from DaVita by Supplier under applicable law. DaVita may provide to Supplier a valid exemption certificate in which case Supplier shall not collect any taxes covered by such certificate. Supplier shall promptly refund to DaVita, in cash, any over-charges of taxes collected by Supplier from DaVita. Supplier shall pay any penalties or interest assessed by any taxing authority as a result of Supplier's failure to comply with this [Section 5.5](#). If taxes are required to be withheld on any amounts otherwise to be paid by DaVita to Supplier, DaVita will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority. DaVita shall secure and deliver to Supplier an official receipt for any taxes withheld. DaVita and Supplier shall use reasonable efforts to minimize such taxes to the extent permissible under applicable law.

6. Delivery.

6.1 Time is of the essence with respect to delivery of the Products and performance of the Services. Supplier will promptly notify DaVita upon discovering any anticipated delay in meeting the Service or Product delivery timeframes.

6.2 Supplier assumes all responsibility for proper packaging of Products for safe shipment to DaVita in accordance with the packing and shipping regulations of the transportation supplier and, if applicable, the packaging, marking, labeling and shipping paper requirements of the United States Department of Transportation's Hazardous Material Regulations. All Product shipments to DaVita shall be F.O.B. Destination. All shipping, transportation and related charges are the sole responsibility of, and shall be prepaid by, Supplier. Supplier shall bear the full risk of loss due to total or partial destruction of the Product prior to delivery to DaVita. Title and risk of loss to Product shall pass to DaVita upon delivery to DaVita's designated delivery location. All Product deliveries shall be made to DaVita's designated delivery location by the delivery date set forth in the Purchase Order or, if no date is so specified, within seven (7) days of receipt of the Purchase Order by Supplier.

7. Inspection & Acceptance.

7.1 All Services performed hereunder shall be subject to DaVita's inspection and acceptance. If any Service is found to not comply with these Terms or any applicable law, DaVita may, in addition to any other rights which it may have under warranties or otherwise, reject the Services and require reperformance by or a refund from Supplier for such non-conforming Services.

7.2 All Products are subject to DaVita's inspection and approval following receipt by DaVita. If, upon DaVita's inspection, Products are found to be defective in material and workmanship, or to not comply with these Terms or any applicable law, DaVita may, in addition to any other rights which it may have under warranties or otherwise, reject and return such Products at Supplier's expense to the address listed on the Purchase

Order, in which case Supplier shall, at DaVita's option, promptly replace such Product without charge to DaVita or accept a return of the Product for a full refund of the purchase price.

7.3 Acceptance of any Product or Service shall not affect the responsibility and obligation of Supplier to perform the Services or provide the Products according to these Terms.

8. Warranties.

8.1 *Products.* Supplier represents and warrants that each Product purchased by DaVita hereunder shall: (a) conform to the specifications and labeling for such Product; (b) be free of defects in design, materials, manufacture and workmanship; (c) be safe and merchantable with respect to products of that kind and shall not be adulterated or misbranded within the meaning of applicable law, including, without limitation, the United States Federal Food, Drug and Cosmetic Act of 1938, as amended, and all associated regulations; (d) be fit for the purposes and indications described in the Product's labeling, package inserts and instructions for use; (e) not be an article that may not be introduced into interstate commerce under applicable law; (f) not be manufactured, sold or shipped in violation of any applicable law; (g) be provided free and clear of any third party liens, assignments, security interests or encumbrances of any kind. Supplier further represents, warrants and covenants that neither the Product nor DaVita's use of the Products will at any time infringe, misappropriate, or otherwise violate any intellectual property right of any third party. In addition to the warranties set forth herein, Supplier hereby assigns to DaVita any third-party manufacturer warranties for Products or components thereof, copies of which shall be provided by Supplier to DaVita. In addition to any other rights or remedies available to DaVita, in the event a Product fails to comply with the foregoing warranties, Supplier shall, at Supplier's sole cost and expense, promptly repair or replace the non-conforming Product. In the event Supplier fails to correct the non-conformance, Supplier shall, as elected by DaVita: (1) reimburse DaVita for the cost of having a third party or a DaVita employee repair or replace the non-conforming Product; or (2) accept a return of any non-conforming Products for a full refund of the Purchase Price paid by DaVita, at Supplier's sole cost and expense, F.O.B. Origin, Freight Collect.

8.2 *Services.* Supplier represents and warrants that the Services: (a) will be performed in a timely, professional, safe, and workmanlike manner by duly qualified, trained, and experienced Personnel in accordance with highest prevailing industry standards for comparable services, within the timeline; (b) will be free of errors and defects and conform to the specifications and requirements of these Terms and any documentation accompanying the Services; (c) will not defame or violate the privacy rights of any third party, (d) will not include (and Supplier will not authorize) any Trojan Horse, back door, time bomb, drop dead device, worm, virus or other code of any kind that may disable, erase or otherwise impair the hardware, software, data or files of DaVita or any third party. Supplier further represents, warrants and covenants that neither the Services nor DaVita's use of the Services will at any time infringe, misappropriate, or otherwise violate any intellectual property right of any third party. In addition to any other rights or remedies available to DaVita, in the event a Service fails to comply with the requirements of these Terms, including any applicable specifications, Supplier shall, at Supplier's sole cost and expense, promptly re-perform/replace and correct the non-conforming Service with Services that conform with the requirements of these Terms. In the event that Supplier fails to correct the non-conformance, Supplier shall, as elected by DaVita: (1) reimburse DaVita for the cost of having a third party or a DaVita employee re-perform the non-conforming Service; (2) provide a full refund of all fees paid for such non-conforming Service, and/or (3) with respect to any ongoing Service, terminate the Service and refund any prepaid fees for undelivered Services.

8.3 *Licenses.* Supplier represents and covenants that it and its Personnel have, and all times shall have, all required licenses, approval and certifications necessary to safely, adequately and lawfully perform Supplier's obligations under these Terms.

8.4 *Personnel.* To the extent Supplier Personnel will require access to DaVita data, facilities, patients or internal IT systems, Supplier shall conduct professional and criminal checks and drug screenings that meet DaVita's then-current requirements and ensure all such Personnel complete any training required by DaVita.

Supplier shall be solely responsible and liable for Personnel's performance under and compliance with these Terms. Supplier shall be solely responsible for the safety of it and its Personnel and compliance with all applicable safety and health laws. Supplier shall immediately remedy any non-compliance. Further, Supplier shall be solely liable for compensating Personnel and paying any taxes, benefits, insurance premiums, or other amounts required by applicable law, and complying with all applicable laws in its employment of all Personnel. Personnel are not employees of DaVita and are not eligible for any compensation or benefits from DaVita. Without DaVita's prior written consent, Supplier shall not use Personnel located outside of the United States in connection with any of Supplier's obligations under these Terms. Supplier acknowledges and agrees it is the sole employer of the Personnel it employs in connection with these Terms and retains sole control over wages, benefits, scheduling, hours, and other terms and conditions of employment of Personnel.

8.5 *Warranty of Non-Exclusion.* Supplier represents and warrants that neither it nor any of its affiliates or Personnel (a) is currently named, or excluded, on, or from, any of the following lists: (i) HHS/OIG List of Excluded Individuals/Entities; (ii) The GSA's System for Award Management, which was formerly known as the GSA List of Parties Excluded from Federal Programs; and (iii) OFAC "SDN and Blocked Individuals"; (b) is currently under investigation or otherwise aware of any circumstances which would result in Supplier being excluded from participation in any Federal health care program, as defined under 42 U.S.C. §1320a-7b(f); (c) has ever been either convicted of a criminal offense, assessed civil monetary penalties pursuant to the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, 42 U.S.C. § 1320a-7(b)(1)-(3) or excluded from the Medicare program or any state health care program; (d) is subject to an action or investigation that could lead to the conviction of a criminal offense, the assessment of civil monetary penalties, or exclusion from the Medicare program or any state health care program.

8.6 *Compliance with DaVita Policies and Procedures.* In providing the Products and/or performing Services, Supplier and all Personnel shall at all times comply with DaVita's Code of Conduct and all other applicable policies available at <https://www.davita.com/about/vendors>.

9. Indemnification. Supplier will indemnify, defend, release and hold DaVita, its affiliates and their respective officers, directors, employees, agents, contractors, assigns and successors, harmless from and against all claims, demands, actions, proceedings or suits and any related liability, loss, damage, expense, and costs (including awards, fines, penalties and the reasonable costs of investigation, defense, attorneys' fees and any remedial actions), of whatever form or nature, that they or any of them may sustain or incur arising out of or relating to, or otherwise in connection with, any of the following: (a) the negligent acts or omissions or willful misconduct by Supplier or its Personnel; (b) Supplier's, or any Personnel's, material breach of any representation, warranty, covenant or obligation in these Terms or failure to comply with any applicable law; (c) the actual or alleged infringement, misappropriation, or other violation of intellectual property rights arising from DaVita's use of the Products or Services; and (d) with respect to Products only, (1) the use of any Product by DaVita in accordance with its labeling and instructions for use; (2) Supplier's design, manufacturing, processing, labeling, marketing, storage, handling or sale of Products (including, without limitation, Claims for property damage, loss of life, or bodily injury); and (3) any Product recall.

10. Insurance. Supplier will maintain insurance in accordance with the requirements located at <https://www.davita.com/about/suppliers>. Any limits on Supplier's insurance coverage shall not be construed to create a limit on its liability with respect to any of Supplier's obligations under these Terms.

11. Governing Law. These Terms shall be governed by and construed and interpreted in accordance with the laws of the State of Colorado and controlling U.S. federal law without regard to conflicts of law principles.

12. Arbitration. Any dispute, Claim or controversy arising out of these Terms, including breach, termination or validity of these Terms, will be settled by arbitration in Denver, Colorado, in accordance with the then in effect Commercial Rules of the American Arbitration Association ("AAA Rules"), as modified by the following. The arbitration shall be conducted in Denver, Colorado. There shall be a single arbitrator where the amount in

controversy (in the aggregate including claims and counterclaims, but irrespective of any potential award of costs or attorneys' fees) does not exceed Four Million Dollars (\$4,000,000). If the parties cannot agree on the identity of the arbitrator within ten (10) days of the filing of the arbitration demand, then the arbitrator shall be selected pursuant to the AAA Rules. There shall be a panel of three (3) arbitrators where the amount in controversy (as defined above) equals or exceeds Four Million Dollars (\$4,000,000). Each party shall select an arbitrator at the time of the filing of the Demand for Arbitration or the Response thereto, respectively, and the Chair of the Panel shall be appointed pursuant to the AAA Rules following the appointment of the second arbitrator. The arbitrator or arbitrators shall issue a reasoned award. The award shall include a determination of which party, in their view, is the prevailing party. The prevailing party shall be entitled to recover its costs of the arbitration from the losing party, provided, however, that each party shall be responsible for its own attorneys' fees. The award shall be enforceable in any court of competent jurisdiction. The parties shall treat the arbitration as confidential, including any documents or testimony exchanged during the course of the arbitration, as well as the fact of the arbitration itself. Notwithstanding the foregoing, each party shall be permitted to institute proceedings in a federal or state court of competent jurisdiction to seek temporary or preliminary injunctive relief (a) to enforce the other party's confidentiality obligations under these Terms, or (b) to preserve the status quo pending the resolution of any Dispute through arbitration.

13. Notices. Any notice required under these Terms must be in writing and sent to each party's representatives at: (a) if to Supplier, the address listed on the Purchase Order; and (b) if to DaVita, DaVita Inc., 2000 16th Street, Denver, Colorado 80202, Attention: Vice President, Procurement, with a copy to DaVita Inc., 2000 16th Street, Denver, Colorado 80202 Attention: Legal Dept., Commercial Contracting. Notices will be delivered in person or by means evidenced by a delivery receipt or acknowledgement (certified or registered mail, postage prepaid and return receipt requested, or via overnight courier). Notices will be effective upon receipt or, if refused, five (5) business days following transmission as provided above.
14. Assignment. These Terms will be binding upon and inure to the benefit of the parties hereto, but shall not be assignable or delegable by any party hereto without the prior written consent of the other party; provided, however, that nothing in these Terms shall or is intended to limit the ability of DaVita to assign or delegate, in whole or in part, any of its rights or obligations under these Terms, without the consent of Supplier to: (a) any affiliate of DaVita; or (b) any buyer of all or substantially all of the assets or equity interests of DaVita whether by reorganization, merger, sale of assets, or sale of equity interests.
15. Subcontractors. Without limiting the foregoing, Supplier shall not subcontract or otherwise delegate its responsibilities under these Terms without DaVita's prior written approval in each instance. Supplier shall cause its approved contractors and subcontractors to comply with these Terms. DaVita's approval shall not relieve Supplier of its obligations under these Terms, and Supplier shall be fully responsible and liable for the acts and omissions of its approved contractors and subcontractors (and their respective employees) as if they were Supplier's own acts or omissions.
16. No Use of Name, No Publicity. Supplier shall not use DaVita's names, trade names, service marks, trademarks, trade dress, or logos, or any of its employees' names, or refer to DaVita, in any public disclosure, including for marketing or promotional purposes, without DaVita's prior written approval in each instance, which DaVita may withhold, condition, deny and/or revoke in its discretion.
17. Confidentiality. Supplier acknowledges and agrees that it may receive or have access to DaVita's Confidential Information in providing the Products and/or Services. Supplier shall keep all Confidential Information in strict confidence, shall take all reasonable steps to prevent any unauthorized use or disclosure of Confidential Information and ensure that its Personnel comply with Supplier's confidentiality obligations hereunder. Supplier may not disclose Confidential Information to anyone without DaVita's prior written consent; however, Supplier may disclose Confidential Information to its Personnel who have a need to know such information for the sole purpose of fulfilling Supplier's obligations under these Terms, provided that all such Personnel are informed of the confidential nature of such information and are bound by an obligation of confidentiality no less restrictive than the obligations herein. Supplier shall be responsible for any unauthorized disclosure or use

of DaVita's Confidential Information by any party to whom the Supplier discloses such Confidential Information. The foregoing confidentiality obligations shall survive expiration or earlier termination of these Terms for a period of five (5) years thereafter, unless such Confidential Information constitutes a trade secret, and in such event, these obligations shall continue for so long as such Confidential Information constitutes a trade secret. The parties acknowledge that the Confidential Information is unique and valuable and that any breach or threatened breach of these Terms will result in irreparable injury to DaVita, for which monetary damages alone would not be an adequate remedy. Therefore, in addition to any other legal or equitable remedies available, DaVita shall be entitled to seek specific performance and an injunction or other equitable relief as a remedy for any threatened or actual breach of these Terms. Each party waives any requirement for the securing or posting of any bond in connection with such remedy, and DaVita shall not be required to prove damages in order to avail itself of such equitable relief.

18. Relationship of Parties. The parties acknowledge and agree that Supplier is providing Products and/or performing Services as an independent contractor for DaVita. Nothing in these Terms is intended to create and will not be construed as creating between Supplier or any Personnel and DaVita the relationship of affiliate, principal and agent, joint venture, partnership, or any other similar relationship, the existence of which is hereby expressly denied. Neither party will have (nor will it hold itself out as having) any right, power, or authority to make or incur any legally binding agreement, obligation, representation, warranty, or commitment on behalf of the other party or to direct any action of or activity by the other party or any of its officers, directors, members, managers, employees, or agents.
19. No Limitation of Rights and Remedies. The various rights and remedies provided in these Terms will be cumulative and in addition to any other rights and remedies to which the parties may be entitled to pursue at law or in equity. The exercise of one or more of such rights or remedies will not impair the right of either party to exercise any other right or remedy at law or in equity.
20. Waiver. Neither party's failure to enforce any rights under these Terms shall be deemed to be a waiver of that or any other rights nor shall it create a continuing waiver or expectation of non-enforcement.
21. Severability. If any term or other provision of these Terms is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of these Terms will remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon any determination that any term or other provision of these Terms is invalid, illegal, or incapable of being enforced, the parties will negotiate in good faith to modify these Terms so as to effect the original intent of the parties as closely as possible.
22. Survival. Except as otherwise expressly provided in these Terms, all covenants, agreements, representations, obligations relating to confidentiality of data or information and compliance with all laws, indemnity, intellectual property, and warranties, express or implied, and any other terms that by their nature must survive to give their intended effect, shall survive and remain in full force and effect following the expiration or earlier termination of these Terms for any reason, and the statute of limitations shall not commence to run until the time such obligations have been fulfilled.
23. Amendment. These Terms and any supporting documents identified as part of these Terms may be altered, amended or revoked only by an instrument in writing signed by each party. These Terms may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealings between the parties not expressly made a part of these Terms.
24. Entire Agreement. These Terms together with the Definitive Agreement (if applicable) and any other documents referenced herein constitute the complete and final agreement of the parties with regard to the subject matter hereof. The parties agree that they have not relied, and are not relying, on any oral or written promises, terms, conditions, representations or warranties, express or implied, outside those expressly stated or incorporated by reference in these Terms. For the avoidance of doubt, no terms or conditions delivered with or contained in

any Supplier quotation, order forms, acknowledgement or acceptance of Purchase Order, specification, invoice, delivery document or similar document will form part of these Terms, and Supplier waives any right which it otherwise might have to rely on such terms and conditions.