

Service Terms & Conditions -- General

These Service Terms & Conditions – General (“Service Terms”) apply to Service Orders referencing these terms that are issued by DaVita Inc. or one of its affiliates and accepted by a counterparty (“Company”). The Service Order and these Service Terms (including any additional terms referenced herein or in the Service Order) together form an agreement between the DaVita entity issuing the Service Order (“DaVita”) and Company (“Agreement”). Any capitalized term not defined in these Service Terms has the meaning set forth in the applicable Service Order.

1. Purchase of Services. By executing a Service Order, DaVita engages Company to provide the Services and Deliverables described in the Service Order in accordance with the terms of this Agreement. Company will be entitled to a Fee solely as provided in the applicable Service Order. Unless provided otherwise in the Service Order, the Fee is exclusive of any taxes assessed on Company’s provision of Services other than taxes based upon Company’s income or property (“Withholding Taxes”). To the extent DaVita must pay Withholding Taxes, DaVita may offset such amount against any current or future invoice. DaVita will pay Company’s undisputed invoices net 60 days from the date of receipt by DaVita’s Accounts Payable department. DaVita will reimburse Company only for out-of-pocket expenses that (a) are pre-approved by DaVita, and (b) comply with DaVita’s then-current travel guidelines and expense reimbursement policy (copies of which are available upon request).
2. Personnel. Company will engage all the individuals, including Company employees and subcontracted individuals, necessary to perform Company’s obligations under this Agreement (“Personnel”). Company will (a) meet DaVita’s requirements for professional and criminal background checks and drug screens on Personnel who (i) have access to DaVita’s Confidential Information, IT systems or premises, or (ii) will be on-boarded by DaVita, and will submit the results to DaVita, (b) ensure that Personnel who access DaVita’s facilities complete any training required by DaVita, and (c) be solely responsible for compensating Personnel and paying any associated taxes, benefits, insurance premiums, etc. Personnel are not employees of DaVita and are not eligible for any compensation or benefits from DaVita and Company remains solely responsible and liable for their performance. Absent DaVita’s express written consent, Company will not use Personnel located outside of the United States to fulfill any of Company’s obligations under this Agreement.
3. Data Privacy and Security. Company will handle Personally Identifiable Information (as defined by <https://www.hhs.gov/ocio/policy/20080001.003.html>) (“PII”) in accordance with [DaVita’s Data Privacy Requirements](#) and will (a) access PII solely as necessary for Company to perform its obligations under this Agreement, (b) employ safety and security procedures in performing the Services that: (i) meet or exceed applicable industry standards, but in no case less than a reasonable standard of care; and (ii) comply with [DaVita’s Security Requirements](#), (c) store PII outside of a DaVita database only as expressly permitted in the Service Order, and (d) complete [DaVita’s Cybersecurity Risk Assessment Questionnaire](#) upon request. Should Company’s provision of Services cause Company to have access to Protected Health Information (“PHI”) as defined by the Health Insurance Portability and Accountability Act of 1996, 45 CFR Parts 160 and 164 (“HIPAA”) that is generated, stored or handled by DaVita, Company will be further bound by the terms of DaVita’s standard form [Business Associate Agreement](#) (“BAA”).
4. Insurance. During the Term, Company will maintain, at its own expense, insurance coverage from an insurance company authorized to do business in the state where Company is headquartered and having a general policyholder’s rating of not less than “A” and a financial rating of not less than “VII” as listed in the most current AM Best Insurance Reports, as follows:
 - (a) Commercial General Liability insurance, naming DaVita as an additional insured and including a blanket waiver of subrogation, and covering bodily injury, death, property damage, personal injury, broad form property damage and contractual liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate;
 - (b) Automobile Liability insurance naming DaVita as an additional insured and covering owned, non-owned and hired vehicles with limits not less than \$1,000,000 per occurrence;

(c) Workers Compensation insurance as required by the law(s) of the state(s) in which the Agreement is to be performed, including a waiver of subrogation in favor of DaVita, and covering Employer's Liability with a limit not less than \$1,000,000;

(d) Umbrella Liability excess of Commercial General Liability, Auto Liability and Employer's Liability with a limit not less than \$5,000,000 per occurrence and in the aggregate;

(e) Professional Liability insurance covering Errors and Omissions on an occurrence or a claims-made basis, covering any services provided under the Agreement, with a limit not less than two \$2,000,000 annual aggregate, and with coverage being maintained for a period of 3 years after the expiration of the Term if the policy is written on a claims-made basis;

(f) Employee Dishonesty coverage, including third party client coverage, with a limit not less than \$2,000,000 per occurrence and in the aggregate; and

(g) Cyber-Liability - Privacy and Security Insurance, with limits not less than \$5,000,000 per occurrence and \$10,000,000 annual policy aggregate, if Company will be exposed to PII. Such insurance must include notification expenses, Non-HIPAA privacy and credit monitoring coverage. If Company handles PHI, such insurance must also include HIPAA Coverage.

Such coverage and limits (a) will be primary to any insurance coverages maintained by DaVita, which will be excess and non-contributory; and (b) will not in any manner limit or qualify Company's liability under this Agreement. As applicable, policies must contain a severability of interests clause and be on an occurrence basis. Prior to starting any Services, Company must furnish to DaVita's Global Sourcing Services Department a signed original certificate of insurance evidencing the required insurance coverages and referencing the applicable Service Order. Company shall provide DaVita with 30 days' prior written notice of any policy cancellation or non-renewal. Company will ensure that any subcontractors performing work under this Agreement procure and maintain insurance that complies with the terms of this section.

5. Intellectual Property. DaVita will exclusively own all Deliverables, including all worldwide statutory or common law intellectual property rights (other than trademarks) ("IPR") therein other than IPR developed by Company prior to or independent of the Services ("Company IPR" and "Deliverable IPR"), and will have the exclusive right to (a) obtain and to hold Deliverable IPR in its own name, (b) require Company to attach notices or legends to the Deliverables as DaVita may instruct; and (c) determine when and how to protect Deliverable IPR. Company (a) hereby assigns to DaVita all rights, title and interest in the Deliverables and the Deliverable IPR; (b) waives any claims Company may have to the Deliverables and the Deliverable IPR; and (c) will cooperate with DaVita, or DaVita's designee, to obtain, evidence, perfect, and assign the Deliverable IPR. Company grants to DaVita a perpetual, royalty-free, irrevocable, worldwide, license to use, reproduce, modify, create derivative works of, sublicense and distribute embedded Company IPR as necessary for DaVita to receive the full benefit of the Services and Deliverables.

6. Data Ownership. DaVita will exclusively own any data or content (i) created pursuant to this Agreement or (ii) provided by DaVita to Company pursuant to this Agreement ("DaVita Data") and has the sole right to use DaVita Data for all commercial purposes. For the term of this Agreement, DaVita grants Company a nonexclusive, royalty-free, terminable license to: (a) use DaVita Data to (i) perform the Services, (ii) internally analyze or improve the Services, and (iii) create aggregated data in a format that precludes the identification of DaVita or any DaVita patients ("Aggregated Data") as needed to perform under this Agreement, and (b) disclose DaVita Data (i) to subcontractors as necessary for Company to perform under this Agreement and (ii) as required by law. These restrictions also apply to Company's participation in a research project and/or publication at DaVita's request.

7. Confidentiality. "Confidential Information" means any information disclosed by one party ("Discloser") to another party ("Recipient") that is (a) at the time of disclosure identified or marked as confidential or proprietary information, (b) information regarding DaVita's technology, strategy, operations, finances, sales, supply chain, transactions, patients, customers, PII, PHI, and information maintained in DaVita internal-only documentation or web sites, or (c) by its nature and the circumstances should reasonably be considered to be confidential information. Recipient will hold Discloser's Confidential Information in

confidence and will disclose such Confidential Information only to Recipient's employees, contractors or representatives ("Representatives") who have a need to know such information for the purpose of performing or receiving benefits under this Agreement ("Purpose") and who are bound by obligations of confidentiality at least as protective as those herein. Recipient will: (a) use Discloser's Confidential Information solely for the Purpose; (b) take all reasonable and necessary steps to ensure that its Representatives comply with Recipient's confidentiality obligations; (c) only disclose Discloser's Confidential Information in response to a valid court order or other legal process to the minimum extent required by that order or process and, if permitted, only after Recipient has given Discloser prompt written notice and the opportunity to seek a protective order or confidential treatment of such Confidential Information (with the reasonable assistance of Recipient, if Discloser so requests); and (d) return or destroy all of Discloser's Confidential Information, as requested by Discloser, within fifteen (15) calendar days of the sooner of (i) Discloser's request, (ii) the expiration of the Term of the applicable Service Order, or (iii) the date on which Recipient no longer needs such Confidential Information to perform the Purpose. The foregoing notwithstanding, DaVita may copy, retain and use Company Confidential Information on an ongoing basis as reasonably necessary for its ongoing use of any deliverables. The foregoing obligations do not apply to any Confidential Information that Recipient can demonstrate with competent evidence (a) is or became generally available to the public, through no fault of the Recipient and without breach of this Agreement; (b) is or was already in Recipient's possession without restriction prior to any disclosure by the Discloser; (c) is or has been lawfully disclosed to Recipient by a third party without an obligation of confidentiality upon Recipient; or (d) was developed independently by Recipient without access to, use of or reference to Discloser's Confidential Information. The parties acknowledge that any breach or threatened breach of this Agreement will cause irreparable harm to the Discloser and, in addition to any other rights and remedies, Discloser will be entitled to an injunction or other protective order to prevent the unauthorized disclosure of Confidential Information.

8. Representations and Warranties. Company represents and warrants that:

(a) Entering into and performing under this Agreement will not violate Company's obligations to any third party;

(b) Company possesses all rights necessary to perform the Services and convey any Deliverables and IPR as specified in this Agreement;

(c) The Services and Deliverables will (i) be completed in a timely, professional, and workmanlike manner by duly qualified, trained and experienced Personnel possessing all relevant certifications, licenses and permits, (ii) be provided free and clear of third party liens, assignments, security interests or encumbrances of any kind; (iii) conform to the specifications in the applicable Service Order and any documentation accompanying the Service or Deliverable, (iii) not infringe or misappropriate any IPR or trademark of any third party, (iv) not defame or violate the privacy rights of any third party, and (v) not contain any software code or other technology that adversely impacts any DaVita equipment or systems or impedes DaVita from obtaining the full benefit of the Service or Deliverable;

(d) Company will notify DaVita promptly upon discovering any anticipated delay in meeting the delivery timeframes set forth in a Service Order;

(e) Company will notify DaVita promptly upon discovering any anticipated delay in meeting the delivery timeframes set forth in an Order;

(f) Company will comply with all applicable (i) laws, rules and regulations (including those relating to equal opportunity employment by federal contractors and subcontractors) and (ii) DaVita policies published at <https://www.davita.com/about/vendor-information> in performing its obligations hereunder; and

(g) Neither Company nor any of its affiliates or personnel

(1) is currently (a) named, or excluded, on, or from, any of the following lists: (i) HHS/OIG List of Excluded Individuals/Entities; (ii) 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"; or (b) under investigation or otherwise aware of any circumstances which would result in

Company being excluded from participation in any Federal health care program, as defined under 42 U.S.C. §1320a-7b(

(2) 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;

(3) 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;

(4) will offer to give to any DaVita employee, agent or representative any gratuity, compensation, gift, remuneration, or benefit for the purposes of securing any business from DaVita or influencing that person with respect to the terms, conditions or performance of this Agreement; or

(5) will accept gratuities which would influence their impartiality, create a conflict of interest, or create the appearance of a bribe or impropriety, relative to purchases made pursuant to this Agreement, and

(h) Company will notify DaVita, immediately, if an action or investigation arises that could result in Company or its affiliates and/or personnel being convicted of a criminal offense or excluded from the Medicare program, any state health care program, or any list identified in Section 8(g)(1).

If a Service or Deliverable fails to comply with a warranty, Company will, at Company's expense, promptly correct the noncompliance, and will not invoice DaVita for any uncorrected, nonconforming work. In the event that Company fails to correct the noncompliance promptly, Company will, as elected by DaVita: (a) reimburse DaVita for the cost of having a third party or DaVita employees repair, replace or re-perform the non-conforming Deliverable or Service, (b) procure the right for DaVita to continue using the Deliverable or Service on substantially the same terms as provided in this Agreement; (c) replace or modify the Deliverable or Service so that it becomes non-infringing while still retaining equivalent functionality and performance, or (d) provide a full refund of all fees paid for such nonconforming Service or Deliverable, and, with respect to any on-going Service, terminate the Service and refund any prepaid fees for undelivered Services.

EXCEPT AS PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Indemnification. Company will indemnify and hold harmless DaVita and its directors, officers, employees, agents, successors and assigns from and against all losses (including awards, fines, penalties and the reasonable costs of investigation, defense, and any remedial actions), arising out of any breach of this Agreement by Company.

10. Limitations on Liability. EXCEPT AS PROVIDED BELOW, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW (1) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, OR OTHER ECONOMIC ADVANTAGE), HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT, BREACH OF WARRANTY OR IN TORT, INCLUDING NEGLIGENCE, AND EVEN IF SUCH PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, AND (2) EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS HEREUNDER WILL BE LIMITED TO TWO TIMES (2X) THE TOTAL AMOUNTS PAID AND PAYABLE BY DAVITA UNDER THIS AGREEMENT. These limitations do not apply to: (a) death, personal injury or property damage resulting from a party's acts or omissions; (b) breaches of confidentiality or obligations relating to DaVita's PII; (c) a party's indemnification obligations under this Agreement; and (d) a party's gross negligence or willful misconduct.

11. Term & Termination. These Service Terms govern the relationship between DaVita and the Company for as long as an applicable Service Order is in effect. Either party may terminate a Service Order for cause immediately by notice for the other party's material breach where such breach (i) is not reasonably

curable or (ii) if curable, is not cured within 30 days of notice of such breach. DaVita may terminate a Service Order for convenience on 30 days notice. These Service Terms will survive the termination of this Agreement.

12. **Obligations upon Termination.** Upon the expiration or termination of a Service Order, Company will (a) within 15 days return (or at DaVita's option, destroy) all DaVita Confidential Information, DaVita Data, Aggregated Data and any other property and materials furnished by DaVita pursuant to such Service Order, (b) deliver all Deliverables, whether finished or unfinished, developed prior to termination, in a form and format useable by DaVita, and (c) immediately provide a pro rata refund of any prepaid or unutilized fees or other payments. Commencing upon the sooner of (i) 90 days prior to expiration or (ii) the issuance of notice of termination for any reason, Company will cooperate with DaVita and provide any transition assistance reasonably requested to prevent any adverse business impact to DaVita, which services shall be billable at the rates specified in the applicable Service Order, or, if not specified or otherwise agreed by the parties in writing, at Company's then-current standard rates for such services. If DaVita terminates this Agreement for convenience, Company will be entitled to any Fee invoiced or invoiceable at the time of termination.
13. **Governing Law.** All disputes arising out of or related to this Agreement will be (a) governed exclusively by the laws of the State of Colorado and controlling U.S. federal law without regard to conflict of laws principles and (b) adjudicated exclusively in a court of appropriate subject matter jurisdiction located in Denver, Colorado. The foregoing notwithstanding, either party may seek equitable relief in any court of competent jurisdiction.
14. **Relationship of Parties.** This Agreement is non-exclusive and is not intended to create a partnership, franchise, joint venture, agency or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor. DaVita may, by itself or through third parties, develop, purchase, use, market, or sell products or services similar to or in competition with the Deliverables or Services. Company acknowledges that DaVita is in possession of, and will from time to time independently develop or receive from third parties, information, know-how, processes, methods, technology, software, documentation, and other materials that are similar to Company's products, services or Confidential Information. This Agreement does not restrict DaVita's use of such materials, and use of such materials does not constitute infringement by DaVita of Company IPR. Company will not (i) use DaVita's trademarks, name or employee's names, (ii) refer to DaVita publicly, or (iii) disclose the existence or subject matter of this Agreement without DaVita's prior written approval. Company certifies that this Agreement is not intended to generate referrals for services or supplies for which payment may be made in whole or in part under any federal or state health care program.
15. **Documentation.** Company will keep proper documentation of all transactions related to this Agreement for a period of 3 years following the Term. In the event that a competent authority requires DaVita to produce such documentation, Company will, upon reasonable notice, permit DaVita or its agent to inspect and copy such documents at Company's facility during normal business hours.
16. **Notice.** Unless otherwise agreed in a Service Order, any notice required under this Agreement must be in writing sent via email to the contact listed on the Service Order, with an electronic confirmation to CommercialContractsReview@davita.com and a written confirmation via overnight courier to the other party's legal department at the address listed in the Service Order. Notices will be effective upon receipt of the written confirmation.
17. **Order of Precedence.** The following order of precedence applies in the event of any conflict between the components of this Agreement: (i) the applicable law or regulation, (ii) the additional terms referenced in these Service Terms, (iii) these Service Terms, and (iv) the Service Order.
18. **Miscellaneous.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. Absent DaVita's prior written consent, Company may not assign this Agreement or any rights and obligations hereunder. Any attempted assignment without such consent will be null and void. DaVita may assign this Agreement, without consent, to any successor to all or substantially all of its assets. Subject to the foregoing, this

Agreement will inure to the benefit of the parties' permitted successors and assigns. This Agreement, including any materials identified herein, constitutes the parties' entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written communications between the parties and prevails over any conflicting or additional terms contained in any document or communication between the parties relating to the subject matter of this Agreement. These Service Terms and any related Service Order may be amended only in writing signed by both parties.