

Service Terms & Conditions -- Recruiting

Revised September 20, 2016

These Service Terms & Conditions – Recruiting (“Recruiting Terms”) apply to Service Orders issued by DaVita Inc. (“DaVita”) or an entity that is part of the same control group as DaVita (“Affiliate”) for Recruiting Services and govern the relationship between the Recruiter identified in the Service Order and DaVita. The Service Order and these Recruiting Terms together form an agreement between DaVita and Recruiter (“Agreement”). Capitalized terms that are not defined in these Recruiting Terms have the meanings assigned to them in the applicable Service Order.

1. Services. By submitting a fully executed Service Order, DaVita engages Recruiter to provide the Recruiting Services described in the Service Order. Recruiter will present DaVita with a pool of candidates that meet the Specifications for the Position as set forth in the Service Order and that collectively represent a diverse segment of the population. Recruiter will be entitled to a fee for its services solely as provided in an applicable, fully executed Service Order.
2. Term & Termination. These Recruiting Terms govern the relationship between DaVita and the Recruiter for as long as an applicable Service Order is in effect. Either party may terminate a Service Order with or without cause, at any time, with the termination taking effect upon delivery of the notice of termination. In the event that DaVita terminates this Agreement for convenience Recruiter shall be entitled to any Fee invoiced or invoiceable at the time of termination. Recruiter shall refund any Fee paid under this Agreement prior to termination in the event that Recruiter terminates the Agreement or DaVita terminates the Agreement for cause. Sections 4-7, 10-12 and 14 of these Recruiting Terms shall survive the termination of this Agreement.
3. Payment Terms. The Fee is contingent upon Recruiter satisfying all applicable contingencies specified in the Service Order. DaVita will pay Recruiter’s undisputed invoices net sixty (60) days from the date of DaVita’s receipt by DaVita’s Accounts Payable department. DaVita will reimburse Recruiter solely 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). If DaVita hires a candidate presented by Recruiter for a Position into a different position (including a position that has the same requirements and/or title as the Position) within twelve months of the date on which Recruiter first sent such candidate’s resume to DaVita, DaVita will pay Recruiter one-half of the Fee for such hired candidate. DaVita may conduct pre-employment background checks, drug screens, and/or physicals of any candidate. If DaVita withdraws an offer to a candidate based on information obtained in such a pre-employment screening, such candidate will be deemed not to have commenced employment with DaVita.
4. Service Guarantee. If a candidate referred by Recruiter resigns or is terminated for cause within twelve (12) months of such candidate’s start date, Recruiter shall, as requested by DaVita, (a) refund the associated Fee to DaVita within thirty (30) days of DaVita’s request, or (b) credit the Fee against future Services. In the event DaVita elects to receive a credit, Recruiter shall have sixty (60) days from the original candidate’s termination date (“Replacement Period”) to present DaVita with an acceptable replacement candidate (“Replacement Candidate”). If DaVita does not hire a Replacement Candidate within the Replacement Period, Recruiter shall refund to DaVita the Fee paid for the original candidate within ten (10) days of the expiration of the Replacement Period.
5. Non-Solicitation. From the Date of a Service Order through the later of (a) two years from such Date, or (b) two years from the referred candidate’s first day of employment with DaVita (“Non-Solicitation

Period”), Recruiter shall not, directly or indirectly solicit any of DaVita’s or its Affiliates’ employees to work (as an employee or an independent contractor) for any other person or entity. During the Non-Solicitation Period, Recruiter shall not contact anyone at DaVita or its Affiliates for a referral or reference related to a search for another employer without first obtaining the approval of DaVita’s CEO. For Replacement Candidates, the Non-Solicitation Period shall continue for two years following the Replacement Candidate’s start date. Prior to assigning any person to work on DaVita’s account, Recruiter shall have such person sign an agreement obligating such person to honor this commitment.

6. Representations and Warranties. Recruiter represents and warrants that:

- (a) Entering into and performing its obligations under this Agreement does not and will not violate any agreement or obligation existing between Recruiter and any third party;
- (b) Recruiter has obtained all necessary releases, consents, rights, licenses, representations, warranties and assignments necessary to perform the Services;
- (c) Recruiter will comply with all applicable (i) laws, rules and regulations and (ii) DaVita policies in performing its obligations hereunder; and
- (d) Neither Recruiter 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 Recruiter being excluded from participation in any Federal health care program, as defined under 42 U.S.C. §1320a-7b(f);

(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; or

(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.

7. Standard of Conduct. Recruiter shall (a) not 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; (b) ensure that its Personnel do not 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 (c) notify DaVita, immediately, if an action or investigation arises that could result in Recruiter, 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 6 (d) above. Recruiter 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.

8. Equal Employment Opportunity. DaVita is an equal opportunity employer and federal contractor. Recruiter shall: (a) require each qualified applicant to submit a resume on DaVita’s job applicant tracking system, and ask each Candidate to provide information concerning their race and gender;

(b) post all openings for Positions with DaVita with the state employment service in the state in which the position will reside; (c) actively recruit and refer qualified female, minority, veteran and disabled candidates; (d) solicit, using voluntary self-identification, gender, race and ethnicity, protected veteran status, and disability status data for all job seekers who meet the basic qualifications of a Position and are considered by Recruiter for such Position, provided however that Recruiter is not obligated to solicit such data from Candidates who remove themselves from consideration for the Position based on geographic limitations, salary demands, job preference, or repeated refusals to respond to contacts; (e) keep records of any data management techniques used to reduce the number of job seekers for consideration for employment; (f) when searching internal or external databases for potential candidates, keep records of (i) each search conducted, (ii) the substantive search criteria used, (iii) the date the search was conducted, (iv) any job seekers Recruiter considers who meet the basic qualifications for the Position and keep a copy of their resumes, and (v) identifying candidates contacted regarding their interest in the Position; (g) track all job seekers for a Position, including creating and retaining records on whether the job seekers were considered for a particular Position and the reasons why job seekers did not advance in the process, as applicable; (h) retain all documents and records, including resumes and applicants, concerning all job seekers and recruitment efforts for DaVita for a period of three (3) years; (i) provide such records to DaVita upon DaVita's request; (j) assist DaVita as may be necessary for DaVita to meet its legal obligations related to its status as a federal contractor, and cooperate with DaVita in the event of any request for records pertaining to such obligations; and (k) submit a diverse slate of presented candidates through DaVita's online portal process in Taleo.

9. Insurance: During the Term, Recruiter shall maintain, at its own expense, insurance coverage from an insurance company authorized to do business in the state where the Recruiter 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 one million dollars (\$1,000,000) per occurrence and two million dollars (\$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 one million dollars (\$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 one million dollars (\$1,000,000);

(d) Umbrella Liability excess of Commercial General Liability, Auto Liability and Employer's Liability with a limit not less than five million dollars (\$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 million dollars (\$2,000,000) annual aggregate, and with coverage being maintained for a period of three (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 two million dollars (\$2,000,000) per occurrence and in the aggregate; and

(g) Cyber-Liability - Privacy and Security Insurance, which shall include HIPAA Coverage, Notification Expenses, Non-HIPAA Privacy and Credit Monitoring coverage, with limits not less than five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) annual policy aggregate.

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 Recruiter'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, Recruiter 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. Recruiter shall provide DaVita with thirty (30) days' prior written notice of any policy cancellation or non-renewal. Recruiter shall ensure that any subcontractors performing work under this Agreement procure and maintain insurance that complies with the terms of this section.

10. 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, 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 Recruiter 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.

11. Indemnification. Recruiter will defend DaVita and its affiliates, and their respective customers, officers, directors, employees, agents, contractors, service providers, assigns and successors ("DaVita Indemnitees") from all claims, demands, actions, proceedings or suits brought against any

DaVita Indemnitee that arises in whole or in part from Recruiter's acts or omissions ("Claims"), and will indemnify and hold harmless the DaVita Indemnitees from any related loss, damage, expense, and cost (including attorney's and professional fees) resulting from a Claim.

12. 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 IN CONNECTION WITH OR 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, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY OR IN TORT, INCLUDING NEGLIGENCE, 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 or personal injury resulting from a party's acts or omissions; (b) breaches of confidentiality; (c) a party's indemnification obligations under this Agreement; and (d) a party's gross negligence or willful misconduct.
13. Affiliates. In the event that a DaVita Affiliate submits a Service Order for Recruiting Services to Recruiter, such Service Order may incorporate these Recruiting Terms, in which case the term "DaVita" shall refer to the Affiliate submitting the Service Order and instead of DaVita Inc.
14. Governing Law. All disputes arising out of or related to this Agreement will be governed by the laws of the State of Colorado and controlling U.S. federal law without regard to conflict of laws principles that would require the application of the laws of another jurisdiction. No choice of law rules of any jurisdiction will apply. All actions to enforce the terms of this Agreement will be brought 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.
15. Order of Precedence. In the event of a conflict between these Recruiting Terms and the Service Order, these Recruiting Terms shall prevail.