

## SUBSCRIPTION SERVICES TERMS

The following terms apply when DaVita purchases a hosted Service on a subscription basis ("Subscription Service").

### 1.0 Subscription Service.

**1.1 Provision of Subscription Service; Content.** Company will make the Subscription Service available to DaVita for the term specified in the Order and/or PO. The Subscription Service will at all times during the term have the functionality, performance and availability described in this Agreement and any applicable documentation. Any data, including PII and PHI, that DaVita stores in, processes through, uploads to, or submits to the Subscription Service ("Content") and any intellectual property rights relating to Content, will, as between DaVita and Company belong exclusively to DaVita.

**1.2 License.** Company grants DaVita a fully paid, world-wide, perpetual, non-exclusive, non-assessable, multi-site, unlimited use, license for the number of users listed on the Order to use the Subscription Service. As between DaVita and Company, Company owns all right, title, and interest in the Subscription Service. DaVita will not lease, loan, resell, distribute or otherwise grant any rights in the Subscription Service to any other party.

**1.3 Hosting.** Unless provided otherwise in the Order, Company will host the Subscription Service and store all Content on physical infrastructure located in the United States.

**1.4 Availability.** Company will run the Subscription Service such that DaVita [and its Affiliates] may access the Subscription Service and Content 24 hours a day, 7 days a week, with the exception of down time for scheduled maintenance that (i) Company provides DaVita written notice of at least 7 days in advance, and (ii) occurs outside the hours of 7:00 a.m. to 9:00 p.m. Pacific Time, Monday through Friday. Company guarantees that the material functions and features of the Subscription Service, including the ability to retrieve and upload Content via the Internet, will be available to DaVita each month for no less than the percentage of time specified in the Order ("Uptime Guarantee"). In the event that Company breaches this Uptime Guarantee, Company will promptly issue a refund to DaVita of fees paid in the amount(s) specified in the Order.

**1.5 Back-Up.** Company will back up the Subscription Service, including DaVita's Content, no less than daily, and will maintain the backup media solely in off-site secure facilities belonging to or controlled by Company. Company will restore any Content that is corrupted, lost, or deleted by Company from the Subscription Service as soon as practicable, but in no event later than 24 hours after Company became aware of the Content loss.

### 2.0 Business Continuity Plan.

**2.1 Business Continuity Plan.** Company will at all times during the term have in place a written business continuity plan ("BCP") setting out the advance arrangements and procedures necessary for Company to respond to any event or occurrence (including a natural disaster, other act of God, war, strike, government action, power failure, or damage

to or destruction of Company's, or Company's contractors', network facilities) that could suspend, delay, inhibit or prevent performance of the Services under this Agreement (each an "Incident"). The BCP must allow Company to ensure that the Subscription Service continues unaffected and in accordance with this Agreement. Upon request, Company will provide DaVita with a complete copy of the BCP and meet with DaVita's designated contacts to review it.

**2.2 Maintenance of BCP.** Company will test the BCP no less than annually, document the test results and update the BCP as warranted. Company will notify DaVita no less than 10 business days any such test and allow DaVita to participate in and/or monitor the test. Upon request, Company will provide DaVita with the test results relating to the Subscription Services. In the event that a test shows, or Company has other reason to believe, that the provisions of the BCP are inadequate or not being followed, Company will (i) notify DaVita immediately in writing and (ii) take all steps necessary to correct the shortcoming as rapidly as possible but in no case more than 30 calendar days. DaVita may immediately terminate this Agreement for cause if Company fails to cure any shortcoming in accordance with the terms of this provision.

**2.3 Continuity Incidents.** Company will notify DaVita immediately, in writing, upon the occurrence of any incident that is contemplated by the BCP. Until normal operations resume, Company will follow the BCP, maintain appropriate records in accordance with industry standards demonstrating Company's compliance with the BCP, and provide DaVita with regular and timely written status updates.

**3.0 Technical Support.** Company will provide technical support as follows:

**3.1 Errors.** Company will establish and implement procedures for detecting and correcting defects, errors or bugs ("Errors") that negatively affect the operation or functionality of the Subscription Service.

**3.2 Support.** Company will provide DaVita with technical support as set forth in the Order and any applicable documentation. At a minimum, such support will include (i) access to Company's technical analysts during the hours specified in the Order via both a toll free telephone number and a designated email address, (ii) assistance in accessing and using the Subscription Service, and (iii) Error correction including identifying and providing bug fixes and workarounds. Company will respond to, and resolve, incidents in accordance with the schedule set forth in the Order.

**3.3 Out of Hours Support.** In the event that Company's help desk operates on less than a 7x24 hour basis, Company will provide telephone numbers, email addresses and escalation procedures for one primary support and at least 2 escalation points for incidents that occur outside of the Company's normal help desk hours.