General Terms and Conditions

By agreeing to receive and/or submitting a Proposal, Bidder accepts and agrees to these General Terms <u>Terms & Conditions</u>

- 1. Definitions.
 - (a) <u>Affiliate</u> means, in relation to Bidder or DaVita respectively, any entity controlling, controlled by, or under common control with such party, for only so long as such control exists. For these directly or indirectly, of the power to direct the management or policies of the entity, whether through the ownership of voting securities, by contract, or otherwise, or (ii) the ownership, of more than fifty percent (50%) of the voting securities or othe

Bidder acknowledges and agrees that: (a) any and all information, data and materials furnished by DaVita in connection with this RFP is provided without any representation or warranty, express or implied, including without limitation, as to the accuracy or completeness of such information, data and materials; (b) DaVita shall have no liability to Bidder, its Affiliates, or its and their respective representatives relating to or arising from the use of or reliance upon any such information, data, and materials or any errors or omissions therein; and (c) the information, data and processes described

no obligation or actionable promise on the part of DaVita.

- 3. <u>DaVita Reservations</u>. DaVita expressly reserves the right, at any time and from time to time, without prior notice and within its sole and absolute discretion, to:
 - (a) cancel, suspend or modify this RFP, or any aspect of this RFP or the evaluation process;
 - (b) determine which bidders to allow to participate in this RFP;
 - (c) establish the evaluation criteria and process related to this RFP;
 - (d) discuss with any DaVita employees, officers, directors, guest teammates, agents, consultants and/or advisors the terms of any Proposal submitted by Bidder in order to assist DaVita in its

DaVita and Bidder agree that in connection with this RFP, it may have access to Confidential information of the other party.

Confidential Information only to prepare and submit a Proposal, and DaVita, in its capacity as the

RFP or as provided elsewhere in these General Terms and Conditions (as applicable to the receiving <u>Purpose</u> Each party, in its capacity as the receiving party, agrees: (a) to maintain and Confidential Information with the same degree of care with which it

treats its own information of a similar nature, but in no event less than reasonable care; (b) not to , except to the

employees, contractors, representatives, agents, Affiliates, auditors, and/or consultants who (i) have a need to know such information for the Purpose, (ii) are informed of the confidential nature of such information, and (iii) are bound by an obligation of confidentiality and restrictions on use no less restrictive than the obligations contained herein. The receiving party shall be responsible for any unauthorized disclosure or use of the disclosing Confidential Information by any party to whom the receiving party discloses such Confidential Information. The foregoing obligations of confidentiality shall survive expiration or earlier termination of the close of this RFP by three (3) years, unless such Confidential Information constitutes a trade secret, and in such event, these obligations shall continue for so long as such Confidential Information, and in such event, these obligations of confidential Information is personally identifiable information, and in such event, these obligations of confidential Information is personally identifiable information, and in such event, these obligations of confidential Information is personally identifiable information, and in such event, these obligations of confidential information is personally identifiable information.

Notwithstanding anything in this Section to the contrary, the receiving party may disclose the

required by a valid court order or other legal process; provided however, that the receiving party has first given the disclosing party prompt notice of the potential disclosure, if such notice is allowed under applicable law, to allow the disclosing party an opportunity to seek a protective order or other relief. The receiving party will cooperate with the disclosing party and provide reasonable assistance in the event the disclosing party seeks a protective order or confidential treatment of such Confidential Information.

Each of DaVita and Bidder acknowledges that Confidential Information is unique and valuable and that any breach or threatened breach of this Section will result in irreparable injury to the disclosing party, for which monetary damages alone would not be an adequate remedy. Each of DaVita and Bidder therefore agrees that, in addition to any other legal or equitable remedies available, the disclosing party shall be entitled to specific performance and an injunction or other equitable relief as a remedy for any threatened or actual breach of this Section. Each of DaVita and Bidder waives any requirement for the securing or posting of any bond in connection with such remedy, and the disclosing party shall not be required to prove damages in order to avail itself of such equitable relief.

7. <u>Representations and Warranties</u>. Bidder represents and warrants that: (a) all information contained in its Proposal is true, accurate and not misleading; (b) its Proposal is original, and does not infringe the rights of any third party; (c) it has read, understands and accepts these Terms and Conditions, which take precedence over any provisions contained otherwise in this RFP or in its Proposal; (d) the execution and delivery of its Proposal shall have been duly authorized by all necessary action on the part of Bidder; (e) Bidder shall not disclose to any other bidder or potential bidder in the RFP process: (i) that Bidder has been invited to, and/or is participating in this RFP or (ii) the existence of, or the price or any other terms or conditions of its Proposal; and (f

offer and there has been no attempt by Bidder to induce any other bidder to submit or not submit a proposal.

8. <u>Conflict of Interest</u>. It is the responsibility of Bidder to notify DaVita in writing of any possible conflict of interest. A conflict of interest may arise if a DaVita employee, officer or agent involved in the RFP has a financial or other interest in Bidder. DaVita reserves the right to suspend or cancel this RFP and/or to disqualify Bidder if, in its sole discretion, it determines that any interest disclosed from any source could give the appearance of a conflict or cause speculation as to the objectivity of the services and/or goods

of interest shall be final.

 <u>Non-Exclusion</u>. Bidder covenants, represents and warrants, that at the time of submission of its Proposal, that neither it nor any of its Affiliates or its or their respective employees, contractors or subcontractors (a) is named, or excluded, on, or from, any of the following lists: (i) HHS OIG List of stem for Award Management, which was formerly

Bidder being excluded from participation in any Federal health care program, as defined under 42 U.SC §1320a-7b(f); (c) has ever been either convicted of a criminal offense, assessed civil monetary penalties pursuant to the Qvil Monetary Penalties Law, 42 U.SC § 1320a-7a, 42 U.SC § 1320a-7(b)(1)-(3) or excluded from the Medicare program or any state health care program; or (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. Bidder will notify DaVita within twenty-four (24) hours if (A) any of the foregoing covenants, representations or warranties are found to have been untrue when made or cease to be true and correct at any time or (B) if an action or investigation arises that could result in the conviction of a criminal offense, or the exclusion of it, or any of its Affiliates or its or their respective employees, contractors or subcontractors from the Medicare program, any state health care program or would otherwise result in it, its Affiliates or its or their respective employees, contractors or subcontractors being excluded as set forth in this Section.

- 10. <u>No Remuneration</u>. Bidder covenants, warrants and represents that Bidder has not, is not obligated to, and will not: (a) make any payment or provide any remuneration or items of value to any third party or to DaVita or its Affiliates, officers, directors or employees in return for DaVita including Bidder in this RFP or for entering into a Definitive Agreement; or (b) accept gratuities which would influence its impartiality, create a conflict of interest, or create the appearance of a bribe or impropriety relative to this RFP or the transactions contemplated by this RFP.
- <u>No Discrimination</u>. It is the policy of DaVita to conduct its relations with a Bidder and that Bidder conducts its relations without any regard to race, color, religion, sex, sexual orientation, pregnancy, age disability, other classification protected by law.
- 12. <u>DaVita's Policies</u>. Bidder should familiarize itself applicable to suppliers performing services for, and/or providing products to, DaVita, as such are published at <u>https://www.davita.com/about/suppliers</u>.