UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

IN THE MATTER OF	)	
UnitedHealth Group Incorporated, **a corporation;**	)	
Collaborative Care Holdings, LLC, **a limited liability company;**	)	**DECISION AND ORDER** **Docket No. C-4677**
DaVita Inc., **a corporation;**	)	
and	)	
DaVita Medical Holdings, LLC, **a limited liability company.**	)	

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of the proposed acquisition by Respondent Collaborative Care Holdings, LLC, controlled by Respondent UnitedHealth Group Incorporated, of all of the issued and outstanding equity interests of Respondent DaVita Medical Holdings, LLC, from Respondent DaVita Inc., collectively referred to in this Decision as "Respondents." The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an agreement ("Agreement Containing Consent Orders" or "Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint; (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true; (3) waivers and other provisions as required by the Commission's Rules; and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent UnitedHealth Group Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 9900 Bren Road East, Minnetonka, Minnesota 55343.

2. Respondent Collaborative Care Holdings, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 9900 Bren Road East, Minnetonka, Minnesota 55343.

3. Respondent DaVita Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 2000 16th Street, Denver, Colorado 80202.

4. Respondent DaVita Medical Holdings, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of California with its executive offices and principal place of business located at 717 17th Street, Denver, Colorado 80202.

5. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in the Orders, the following definitions shall apply:

A. "UnitedHealth" means UnitedHealth Group Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates, controlled by UnitedHealth Group Incorporated (including, Collaborative Care Holdings, LLC), and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

B. "Collaborative Care Holdings" means Collaborative Care Holdings, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates, controlled by Collaborative Care Holdings, LLC, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

C. "DaVita" means DaVita Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by DaVita Inc., and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

D. "DaVita Medical Holdings" means DaVita Medical Holdings, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by DaVita Medical Holdings, LLC, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

E. "Commission" means the Federal Trade Commission.

F. "Respondents" means UnitedHealth, Collaborative Care Holdings, DaVita, and DaVita Medical Holdings, individually and collectively.

G. "Acquirer(s)" means the following:

1. Intermountain; and
2. any other Person approved by the Commission to acquire the HealthCare Partners Nevada Assets.

H. "Acquisition Agreement" means the *Equity Purchase Agreement* among DaVita Inc., Collaborative Care Holdings, LLC, and solely with respect to Section 9.3 and Section 9.18, UnitedHealth Group Incorporated dated as of December 5, 2017, and the *First Amendment to the Equity Purchase Agreement* dated as of September 20, 2018, and the *Second Amendment to the Equity Purchase Agreement* dated as of December 11, 2018, pursuant to which Respondent UnitedHealth intends to acquire DaVita Medical Holdings.

I. "Acquisition Date" means the date on which Respondent UnitedHealth acquires any Ownership Interest in DaVita Medical Holdings.

J. "Business Information" means all originals and all copies of any operating, financial or other information, books, records, documents, data computer files (including files stored on a computer hard drive or other storage media), electronic files, ledgers, papers, instruments, and other materials, wherever located and however stored (*i.e.*, whether stored or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media) used in the HealthCare Partners Nevada Business, including the following:

1. customer files and records;
2. patient information, including individually identifiable health information of patients (*i.e.*, patient files and records, including all such electronic medical records) and all patient information used to track patient usage of medical services and health status of patients, patient registries, patient referrals, patient prior authorizations, patient experience reports, claims, hospital admissions, and all other such patient information as contained in Respondent DaVita's data warehouse;
3. Healthcare Plan information, including records related to the negotiating and/or contracting histories with Healthcare Plans, reimbursement histories with Healthcare Plans, correspondence with, and presentations and proposals to, Healthcare Plans;
4. records related to accounts payable, rent, payment processing, financial applications, actuarial services, financial reporting, and tax returns (but only to the extent a particular tax return is requested by the Acquirer);
5. human resource records, including records related to payroll, employee compensation, employee support, employee learning and development, employee benefits and recruitment;
6. records related to information technology systems and contracts with Third-Parties related to the provision of these systems;
7. records related to care and disease management;
8. records related to Government Approvals;
9. records related to compliance with applicable healthcare laws;
10. records related to coding, billing, and health assessments for healthcare services;
11. Healthcare Provider information, including records related to the negotiation and/or contracting histories with Healthcare Providers, contract administration, performance of Healthcare Providers, Healthcare Provider credentialing, and presentations and proposals made to Healthcare Providers; and
12. CMS information, including records related to the CMS Star Quality Rating

System, and the CMS risk adjustment factor measurements.

provided, however, that in cases in which such documents and materials contain information: (i) that relates both to the HealthCare Partners Nevada Business and the Retained Businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the HealthCare Partners Nevada Business; or (ii) for which any Respondent has a legal obligation to retain the original copies, that Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where Respondents provide such copies to the Acquirer, the Respondents shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that the Respondents provide the Acquirer with the above-described information without requiring a Respondent completely to divest information that, in content, also relates to a Retained Business.

K. "CMS" means the United States Centers for Medicare and Medicaid Services.

L. "Direct Cost" means a cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to an Acquirer for the labor of a Respondent's employee shall not exceed the then-current average hourly wage rate for such employee.

M. "Divestiture Date" means the date on which a Respondent (or a Divestiture Trustee) close on the divestiture of the HealthCare Partners Nevada Assets as required by Paragraph II of this Order.

N. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IX of this Order.

O. "Domain Name(s)" means the domain name(s) and the related uniform resource locator(s) and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration.

P. "Employee Information" means the following to the extent such disclosure to the Acquirer is permitted by Law:

1. a complete and accurate list containing the name of each Information Technology and Critical Services Employee;

2. with respect to each such employee:

   a. the date of hire and effective service date;

   b. job title or position held;

   c. a description of the employee's responsibilities related to the Information Technology or the provision of the services related to use of the Information Technology; *provided, however*, in lieu of this description, the relevant

Respondent may provide the employee's most recent performance appraisal;

d. the base salary or current wages;

e. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, and current target or guaranteed bonus, if any;

f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and

g. any other material terms or conditions or employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

3. at the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

Q. "Essential Employee" means certain managers of the HealthCare Partners Nevada Business and Information Technology experts listed in Non-public Appendix I attached to this Order.

R. "Excluded Assets" means, the following:

1. all cash, cash equivalents and short-term investments of cash (other than minimum operating cash as agreed upon between Respondents and the Acquirer);

2. tax refunds and tax credits that relate to taxes for which Respondents are liable under the Acquisition Agreement or the HealthCare Partners Nevada Divestiture Agreements;

3. rights to the following corporate names or corporate trade dress "Optum", "DaVita", "DaVita Medical Group", "UnitedHealth", "HealthCare Partners", "HCP" and "JSA", or the related corporate logos thereof, or any Trademark or Domain Name that consists of or incorporates any of the foregoing, other than to the extent licensed or divested to the Acquirer pursuant to this Order;

4. rights for employees to participate in employee benefit plans offered by Respondents related to the HealthCare Partners Nevada Companies (other than to the extent the HealthCare Partners Nevada Companies or HealthCare Partners Medical Group (Coats), Ltd. continue to participate in such plans for an interim period pursuant to this Order);

5. all assets owned by HealthCare Partners Medical Group (Coats), Ltd.;

6. any inter-company balances due to or from Respondents or their affiliates (which will be settled, offset, paid, capitalized or cancelled on or before the Divestiture Date); and

7. telecommunication equipment, information systems equipment, and computer hardware not physically located in Nevada.

S. "Geographic Territory" means Clark County and Nye County in the State of Nevada.

T. "Government Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests thereof, required by Government Entities for the operation of the HealthCare Partners Nevada Business.

U. "Government Entity(ies)" means any Federal, state, local, or non-U.S. government; any court, legislature, government agency, or government commission; or any judicial or regulatory authority of any government. The term "Government Entities" includes CMS and the Bureau of Health Care Quality and Compliance of the State of Nevada.

V. "HealthCare Partners Nevada Assets" means all legal or equitable rights, title, and interest in and to all tangible and intangible assets, wherever located, relating to the HealthCare Partners Nevada Business, to the extent legally transferable and as such assets are in existence as of the date the Respondents sign the Consent Agreement in this matter, including the following:

1. all Ownership Interests in each of the HealthCare Partners Nevada Companies;
2. all Owned Real Property;
3. all rights of the Respondents under the HealthCare Partners Nevada Medical Group Agreements;
4. all Government Approvals;
5. all National Provider Identifiers and CMS Certification Numbers (also known as Medicare/Medicaid Provider Numbers) related to the HealthCare Partners Nevada Companies;
6. all Owned Intellectual Property used exclusively in the HealthCare Partners Nevada Business;
7. the HealthCare Partners Nevada Medical Protocols;
8. the HealthCare Partners Nevada Policies and Procedures;
9. the "My Generation" Trademark;
10. all Marketing Materials;
11. all Website(s) primarily related to the HealthCare Partners Nevada Business;
12. all Domain Name(s) primarily related to the HealthCare Partners Nevada Business, including the following: hcpnv.com, loveathcpnv.com, hcpwomenshealth.com, ccnv.com, and wellhealthqc.com;
13. the content exclusively related to the HealthCare Partners Nevada Business that is displayed on any Website that is related to the Retained Businesses;
14. at the option of the Acquirer, Respondents' rights under any or all of the HealthCare Partners Nevada Contracts; and
15. all Business Information;

provided, however, the term "HealthCare Partners Nevada Assets" does not include the Excluded Assets.

W. "HealthCare Partners Nevada Business" means the business of HealthCare Partners Nevada Companies in connection with:

1. the provision of professional medical and related healthcare services to patients in the State of Nevada, including in a coordinated care, managed care, or fee-for-service model or otherwise;
2. the related care management, decision support, Information Technology, and other administrative or management services; and
3. the operation, management, coordination, or ownership of physician groups and networks, clinics, healthcare facilities, ancillary services, and other activities to provide such healthcare services in the State of Nevada.

X. "HealthCare Partners Nevada Company(ies)" means the following companies, individually and collectively:

1. DaVita Medical Holdings Florida, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 717 17th Street, Denver, Colorado 80202;
2. HCP Medical LV, LLC (f/k/a DaVita Medical LV, LLC; DaVita Medical IPA, LV, LLC), a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Nevada with its executive offices and principal place of business located at 700 E. Warm Springs Road, Las Vegas, Nevada 89119;
3. HCP IPA Nevada, LLC (f/k/a DaVita Medical IPA Nevada, LLC; JSA P5 Nevada, L.L.C.), a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Nevada with its executive offices and principal place of business located at 700 E. Warm Springs Road, Las Vegas, Nevada 89119;
4. HealthCare Partners Management Services Nevada, LLC, (f/k/a DaVita Medical Management Services Nevada, LLC; HealthCare Partners Nevada, LLC), a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Nevada with its executive offices and principal place of business located at 700 E. Warm Springs Road, Las Vegas, Nevada 89119; and
5. HealthCare Partners of Nevada, LLC (f/k/a DaVita Medical Nevada, LLC; JSA Healthcare Nevada L.L.C.), a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Nevada with its executive offices and principal place of business located at 700 E. Warm Springs Road, Las Vegas, Nevada 89119.

Y. "HealthCare Partners Nevada Confidential Business Information" means all Business Information owned by, or in the possession or control of, a Respondent that is not in the public domain. The term "HealthCare Partners Nevada Confidential Business Information" *excludes* the following:

1. information relating to a Respondent's general business strategies or practices that does not discuss with particularity the HealthCare Partners Nevada Business;
2. information specifically excluded from the HealthCare Partners Nevada Assets conveyed to the Acquirer; and
3. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the acquisition of DaVita Medical Holdings by UnitedHealth and relating to any United States, state, or foreign antitrust or competition Laws.

Z. "HealthCare Partners Nevada Contract(s)" means all contracts, agreements, mutual understandings, arrangements, or commitments related to the HealthCare Partners Nevada Business, including the following:

1. pursuant to which a Healthcare Provider within the State of Nevada, contracts with a Respondent for the Respondent to provide management services, such as: credentialing, claims payment, utilization management, electronic medical recordkeeping, and care management;
2. pursuant to which a Healthcare Provider within the State of Nevada affiliates with or is employed by a Respondent;
3. pursuant to which a Healthcare Plan contracts with a Respondent;
4. pursuant to which a Third Party provides any specialized services used in the operation of the HealthCare Partners Nevada Business to a Respondent, including, but not limited to, radiologic services, diagnostic services, clinical laboratory services, and consultation arrangements;
5. pursuant to which a Third Party leases any equipment used in the operation of the HealthCare Partners Nevada Business to a Respondent;
6. pursuant to which a Third Party provides any data processing or storage used exclusively in the operation of the HealthCare Partners Nevada Business to a Respondent, including such data processing or storage related to the following: practice management; care/disease management; referral management; data exchange/interfacing; certificate of completion training document management; inpatient charge capture; eligibility management/verification; claims adjudication; electronic data interchange processing/clearinghouse; and patient master data management/master patient index;
7. pursuant to which a Third Party licenses any Intellectual Property exclusively used in the operation of the HealthCare Partners Nevada Business to a Respondent;

8. pursuant to which a Third Party leases any real property used in the operation of the HealthCare Partners Nevada Business to a Respondent;

9. pursuant to which a Third Party leases any machinery, equipment, vehicles or other tangible personal property to a Respondent used in the operation of the HealthCare Partners Nevada Business to a Respondent;

10. intracompany contracts between Respondent-controlled entities for the purposes of the operation of the HealthCare Partners Nevada Business ("Intracompany Contracts"), including:

    a. the *Amended and Restated Intra-Company Services Agreement* between VillageHealth DM LLC and DaVita Medical IPA Nevada, LLC, dated January 1, 2018;

    b. the *Amended and Restated Provider Services Agreement* between DaVita Inc. and DaVita Medical IPA Nevada, LLC, dated December 1, 2017;

provided, *however*, that where any such contract, agreement, mutual understanding, arrangement, or commitment covers services being provided by a Third Party to a Respondent that are used in both the HealthCare Partners Nevada Business and the Retained Businesses, the Respondent shall, at the Acquirer's option, make available to the Acquirer all such services provided to that Respondent under that contract, agreement, mutual understanding, arrangement, or commitment as are used in the HealthCare Partners Nevada Business;

provided further, however, that HealthCare Partners Nevada Contracts *excludes* Intracompany Contracts where, on or before the Divestiture Date, Respondents and the Acquirer have agreed in a HealthCare Partners Nevada Divestiture Agreement for Respondents to provide the services covered by the Intracompany Contracts to the Acquirer.

AA. "HealthCare Partners Nevada Divestiture Agreement(s)" means the following:

1. *Equity Purchase Agreement* by and between Collaborative Care Holdings, LLC and IHC Health Services, Inc., dated May 3, 2019, and as amended on May 31, 2019;

2. *Transition Services Agreement* by and between Collaborative Care Holdings, LLC and IHC Health Services, Inc. to be executed on or before the Divestiture Date;

3. *Trademark License Agreement* by and among Collaborative Care Holdings, LLC, DaVita Medical Management, LLC, and IHC Health Services, Inc. to be executed on or before the Divestiture Date;

4. all amendments, exhibits, attachments, agreements, and schedules attached to and submitted to the Commission with the foregoing listed agreement(s); and

5. any other agreement between a Respondent(s) and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to

accomplish the requirements of this Order.

The HealthCare Partners Nevada Divestiture Agreements submitted to the Commission by the Respondents on or before the Order Date are contained in Non-Public Appendix II.

BB. "HealthCare Partners Nevada Licenses" means the following:

1. a perpetual, non-exclusive, fully paid-up, irrevocable, and royalty-free license(s) to use any Shared Intellectual Property to operate the HealthCare Partners Nevada Business; with respect to any Software included in the Shared Intellectual Property that is being used by the Acquirer during the period in which Respondents are providing transition services, such Software shall be licensed to the Acquirer immediately upon the Divestiture Date, and shall include rights to all updates and improvements made to such Software during the time that the Respondents are providing Transition Services to the Acquirer. Respondents are not required to provide rights to any updates or improvements made by Respondents thereafter;

2. an exclusive as to UnitedHealth, Collaborative Care Holdings, and DaVita Medical Holdings and non-exclusive as to DaVita (with respect to the "DaVita" Trademark), fully paid-up, and royalty-free sublicense within the State of Nevada to use the Trademarks "DaVita" and "DaVita Medical Group" and related logos in the operation of the HealthCare Partners Nevada Business for a period continuing until six (6) months after the Divestiture Date or until March 1, 2020, whichever is later, *provided, however,* that the granting of such sublicense shall not restrict DaVita from using the Trademark "DaVita" and related logos within the State of Nevada; and

3. for at least a three-year period, an exclusive, fully paid-up, and royalty-free license within the State of Nevada, without rights to sublicense, to use the Trademark "HealthCare Partners" and certain related acronyms, corporate names, logos, and social media accounts in the operation of the HealthCare Partners Nevada Business, including rights to use the foregoing in connection with any Marketing Materials, Web Portals, or Websites related to the HealthCare Partners Nevada Business that may be disseminated, or are capable of being viewed or accessed, outside the State of Nevada, for a period continuing until at least three (3) years after the Divestiture Date.

CC. "HealthCare Partners Nevada Medical Group Agreements" means the following:

1. the *Management Services Agreement* between Amir Bacchus, MD, doing business as Fremont Medical Center, Ltd. (now known as HealthCare Partners Medical Group (Coats), Ltd.) and HealthCare Partners Nevada, LLC (now known as HealthCare Partners Medical Management Services Nevada, LLC) dated July 1, 2009;

2. the *Stock Transfer Restriction Agreement* among HealthCare Partners Medical

Group (Coats), Ltd., HealthCare Partners Nevada, L.L.C., and Bard Coats, M.D. dated February 24, 2015; and

3. the *Independent Contractor Agreement* between HealthCare Partners Nevada, LLC (now known as HealthCare Partners Medical Management Services Nevada, LLC and Bard Coats, M.D. dated February 24, 2015.

The HealthCare Partners Nevada Medical Group Agreements are contained in Non-Public Appendix II.

DD. "HealthCare Partners Nevada Medical Protocols" means all medical protocols owned by DaVita Medical Holdings, whether in hard copy or electronic format, and the related operational systems that have been used or in effect in the HealthCare Partners Nevada Business at any time since January 1, 2017, including such protocols that are modifications or customizations of protocols adapted from Third-Parties.

EE. "HealthCare Partners Nevada Policies and Procedures" means all policies and procedures owned by DaVita Medical Holdings, whether in hard copy or electronic format, and the related operational systems that have been used or in effect in the HealthCare Partners Nevada Business at any time since January 1, 2017 including such policies and procedures that are modifications or customizations of policies and procedures adapted from Third-Parties.

FF. "Healthcare Plan(s)" means any Person that administers, pays, or insures health or medical expenses on behalf of beneficiaries or recipients including the following: Government Entities (*e.g.*, Medicare or Medicaid), preferred provider organizations, self-insured employers, healthcare maintenance organizations, or health insurance companies.

GG. "Healthcare Provider(s)" means:

1. a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

2. any other Person determined by the United States Secretary of Labor to be capable of providing healthcare services.

HH. "Information Technology" means Software and any tangible or digital computer systems (including computers, servers, workstations, routers, hubs, switches, networks, communications equipment, data processing systems, data centers, data communication lines, and other hardware and related equipment used to develop, test, operate, monitor, manage or support information technology services), and any Business Information stored therein, and Internet-related information technology infrastructure owned or leased by a Respondent to the extent used in the HealthCare Partners Nevada Business (whether or not the infrastructure is physically located within a facility divested to the Acquirer pursuant to this Order) as of the Divestiture Date that are used to provide information and services to Healthcare Providers, Healthcare Plans, employees, patients, vendors, customers, Government Entities, and others having business relations with the HealthCare Partners Nevada Business.

II. "Information Technology and Critical Services Employee(s)" means all current or former salaried employees of a Respondent who are not transferred to the Acquirer pursuant to the HealthCare Partners Nevada Divestiture Agreement(s) who directly have participated in the ongoing operation, installation, maintenance, or administration of the Information Technology related to the HealthCare Partners Nevada Business or the provision of the services related to use of the Information Technology by employees, customers, patients, Healthcare Providers, Healthcare Plans, or others having a business relationship with the HealthCare Partners Nevada Business within the eighteen (18) month period immediately prior to the Divestiture Date (but excluding any such employee who is (i) designated by the Respondents to effect the transfer and delivery of the Information Technology to the Acquirer pursuant to the Tech Transfer Standards required by this Order, and (ii) who is directly providing such services to the Acquirer).

JJ. "Intellectual Property" means any and all forms of intellectual property, including any and all:

1. technology, procedures, processes, methods, techniques, ideas, creations, inventions, and discoveries (whether patentable or unpatentable and whether or not reduced to practice) and improvements thereto;
2. confidential and proprietary information, including know-how and trade secrets;
3. works of authorship and other copyrightable subject matter;
4. Software;
5. Trademarks; and
6. Information Technology other than hardware or equipment.

KK. "Intermountain" means IHC Health Services, Inc., a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah with its executive offices and principal place of business located at 36 South State Street, Salt Lake City, Utah 84111, and any subsidiaries of IHC Health Services, Inc.

LL. "Law(s)" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.

MM. "Las Vegas Healthcare Provider" means any Healthcare Provider in the Geographic Territory.

NN. "Marketing Materials" means all marketing materials used in the marketing or sale of the products or services offered by the HealthCare Partners Nevada Business as of the Divestiture Date, including all advertising materials, training materials, service data, mailing lists, sales materials (*e.g.*, sales reports, sales funnel or process information, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information, sales forecasting models, educational materials, advertising and display materials, and speaker lists.

OO. "Medicare Advantage Plan" means any healthcare insurance offered by a private (non-governmental) Healthcare Plan that covers all of the services that original Medicare Part A and Part B cover and that is approved by CMS to be offered as a "Part C" or "MA Plan", pursuant to Title XVIII of the Social Security Act, Part C.

PP. "Monitor" means any monitor appointed pursuant to Paragraph VIII of this Order or Paragraph III of the related Order to Maintain Assets.

QQ. "Nevada Medicare Advantage Plan" means a Medicare Advantage Plan offered or to be offered to any Person residing in the Geographic Territory.

RR. "Orders" means this Decision and Order and the related Order to Maintain Assets.

SS. "Order Date" means the date on which the final Decision and Order in this matter is issued by the Commission.

TT. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.

UU. "Owned Intellectual Property" means Intellectual Property owned by a Respondent as of the Divestiture Date.

VV. "Owned Real Property" means all real property in which any HealthCare Partners Nevada Company has fee title (or equivalent) interest, together with all buildings and other structures, facilities or improvements located thereon, all fixtures, systems, equipment and items of personal property of any HealthCare Partners Nevada Company attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing, including all such property related to the clinics owned or managed by any of the HealthCare Partners Nevada Companies.

WW. "Ownership Interest" means any voting securities, non-voting securities, share capital, non-corporate interest, notes convertible into any voting or non-voting stock, contractual power to designate a director of an entity, equity, or other interest in an entity or its assets.

XX. "Person(s)" means any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, or Government Entity, and any subsidiaries, divisions, groups, or affiliates thereof.

YY. "Retained Businesses" means all businesses acquired by Respondent UnitedHealth pursuant to the Acquisition Agreement other than the HealthCare Partners Nevada Business.

ZZ. "Shared Intellectual Property" means all Owned Intellectual Property (other than Trademarks and Domains Names) that is (i) used in the operation of the HealthCare Partners Nevada Business as of the Divestiture Date and (ii) that, prior to the Acquisition Date, Respondents can demonstrate has also been used in the Retained Businesses. The term "Shared Intellectual Property" includes all such DaVita or DaVita Medical Holdings proprietary Software, including the Physicians Information Portal and the Clinical Viewer through which a physician is able to obtain web-based, point of care information regarding a patient, including diagnosis history, provide quality indicators, historical risk adjustment coding

information, a pharmacy medication history, and other key information.

AAA. "Software" means computer programs related to the HealthCare Partners Nevada Business, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, firmware (permanent software programmed into a read-only memory), middleware (software that acts as a bridge between an operating system or database and applications), databases and compilations (including any and all data and collections of data), and all associated documentation (including user manuals and training materials). Software includes any data mining technology used to track patient usage of medical services.

BBB. "Technology Transfer Standards" means requirements and standards sufficient to ensure that the Information Technology and related assets required to be delivered to an Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, and timely manner that ensures that the services provided by the Information Technology will continue uninterrupted and undiminished in functionality and utility. Such standards and requirements shall include, *inter alia*:

1. designating employees of a Respondent knowledgeable about the Information Technology (and all related Intellectual Property) who will be responsible for communicating directly with the Acquirer and the Monitor for the purpose of effecting such delivery *unless* such Persons are hired by the Acquirer;

2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Information Technology that are acceptable to the Acquirer to the extent that any such technology is not maintained and fully available on a system that is being divested to the Acquirer pursuant to this Order;

3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer and delivery of all relevant information, data, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Information Technology (including all related Intellectual Property) to the Acquirer to the extent that any such technology and information is not maintained and fully available on a system that is being divested to the Acquirer pursuant to this Order; and

4. to the extent the Persons with the relevant knowledge about the Information Technology remain employees of a Respondent, providing, in a timely manner, assistance and advice from these employees to enable the Acquirer to:

    a. use the Information Technology in the quality and manner consistent with past practices; and

    b. receive, integrate, and use all such Information Technology and all such Intellectual Property related to the HealthCare Partners Nevada Business.

CCC. "Third Party(ies)" means any non-governmental Person other than a Respondent or the

Acquirer.

DDD. "Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof), and all common law rights, and the goodwill symbolized thereby and associated therewith.

EEE. "Transition Services" means the following:

1. all services, assistance, training, and access to personnel that, prior to the Acquisition Date, Respondent DaVita or Respondent DaVita Medical Holdings provided to the HealthCare Partners Nevada Companies related to the HealthCare Partners Nevada Business from an entity within Respondent DaVita and/or Respondent DaVita Medical Holdings other than the HealthCare Partners Nevada Companies; and

2. all services and assistance necessary to transfer and deliver the Information Technology to the Acquirer in a manner consistent with the Technology Transfer Standards.

FFF. "Web Portal(s)" means all specially designed websites, whether for internal use (*e.g.*, by employees or by affiliated physicians or other Persons that comprise the network of HealthCare Partners Nevada Business) or for external use, (*e.g.*, by patients or Healthcare Plans) that are (i) acquired or to be acquired by UnitedHealth pursuant to the Acquisition Agreement and (ii) used in the conduct of the HealthCare Partners Nevada Business as of the Divestiture Date, and the related operational systems.

GGG. "Website(s)" means the content of all external Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by a Respondent as of the Divestiture Date; *provided*, *however*, the term "Website" shall not include the following: (1) content owned by Third-Parties and other Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that a Respondent can convey its rights, if any, therein; or (2) content not directly related to operation of the HealthCare Partners Nevada Business.

II. Divestiture

IT IS FURTHER ORDERED that:

A. Not later than forty (40) days after the Acquisition Date, Respondents shall divest the HealthCare Partners Nevada Assets and grant the HealthCare Partners Nevada Licenses, absolutely and in good faith, to Intermountain pursuant to, and in accordance with, the HealthCare Partners Nevada Divestiture Agreements and in a manner consistent with the Technical Transfer Standards, as applicable.

B. If Respondents have divested the HealthCare Partners Nevada Assets to Intermountain prior to the Order Date, and if, at the time the Commission determines to make this Order final

and effective, the Commission notifies Respondents that:

1. Intermountain is not an acceptable purchaser of the HealthCare Partners Nevada Assets, then Respondents shall immediately rescind the transaction with Intermountain in whole or in part, as directed by the Commission, and shall divest the HealthCare Partners Nevada Assets and grant the HealthCare Partners Nevada Licenses within one hundred eighty (180) days after the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission; or

2. the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the HealthCare Partners Nevada Assets to Intermountain (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

C. Prior to the Divestiture Date, Respondent shall provide the Acquirer with the opportunity to review all contracts or agreements that are HealthCare Partners Nevada Contracts for the purposes of the Acquirer's determination whether to assume such contracts or agreements.

D. Prior to the Divestiture Date, Respondents shall secure all consents and waivers from all Third-Parties that are necessary to permit Respondents to divest the HealthCare Partners Nevada Assets to an Acquirer, and to permit the Acquirer to continue the HealthCare Partners Nevada Business without interruption or impairment;

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third-Parties.

E. Respondents shall not use or license any Third Party to use the Trademark "HealthCare Partners" and related acronyms, corporate names, social media accounts, Domain Names, and logos within the State of Nevada for a period of at least three (3) years following the term of any HealthCare Partners Divestiture Agreement to license such Trademarks to the Acquirer within the State of Nevada, *except* to the extent it would be permissible as nominative or descriptive fair use under the applicable trademark laws.

III. Divestiture Agreements

IT IS FURTHER ORDERED that:

A. The HealthCare Partners Nevada Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by a Respondent to comply with any term of the HealthCare Partners Nevada Divestiture Agreements shall constitute a violation of the Order; *provided, however*, that the HealthCare Partners Nevada Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the HealthCare Partners Nevada Divestiture Agreements varies from or

conflicts with any provision in the Order such that the Respondents cannot fully comply with both, Respondents shall comply with the Order.

B. The Order shall not be construed to reduce any right or benefits of the Acquirer or to reduce any obligations of the Respondents to the Acquirer under the HealthCare Partners Nevada Divestiture Agreements.

C. Respondents shall include in the HealthCare Partners Nevada Divestiture Agreements a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.

D. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any HealthCare Partners Nevada Divestiture Agreement, a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.

E. Respondents shall not modify or amend any of the terms of any HealthCare Partners Nevada Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

A. Respondents shall, upon written request of the Acquirer, provide Transition Services in a timely manner and under reasonable terms and conditions at no greater than Direct Cost for a period of time sufficient to allow the Acquirer to perform the services independently of Respondents.

B. Respondents shall provide access to, and use of, all of the Information Technology, Business Information, Web Portals, and Intellectual Property (whether owned by, or licensed to, the Respondents) as is necessary to ensure the uninterrupted operations of the HealthCare Partners Nevada Business as of the Divestiture Date in the quality and manner consistent with past practices and for a period of time sufficient to allow the Acquirer to integrate and fully operate the HealthCare Partners Nevada Business.

C. During the term of any agreement with the Acquirer to provide Transition Services and pursuant to such agreement and this Order, Respondents shall:

1. provide such Transition Services to the Acquirer in a manner commensurate to the performance of such services immediately prior to the Divestiture Date (in nature, quality, degree of care, skill, diligence, and timeliness);

2. take all actions as are reasonably necessary to ensure that the provision of Transition Services to the Acquirer are uninterrupted;

3. not limit damages (such as indirect, special, and consequential damages) that the

Acquirer would be entitled to receive in the event of Respondents' breach of such agreement;

4. not be entitled to terminate such agreement due to the Acquirer filing a petition in bankruptcy, or entering into an agreement with its creditors, or applying for or consenting to appointment of a receiver or trustee, or making an assignment for the benefit of its creditors, or becoming subject to involuntary proceedings under any bankruptcy or insolvency Law;

5. provide consultation with knowledgeable employees of Respondents and training, at the written request of the Acquirer, for the purposes of enabling the Acquirer to provide such services independently of the Respondents;

6. permit the Acquirer to terminate such agreement at any time upon commercially reasonable notice and without cost or penalty (other than costs or penalties due or owed to Third-Parties pursuant to the termination of any such agreement, which shall be the responsibility of the Acquirer); and

7. upon the Acquirer's request, file with the Commission a written request to extend the time period of any such agreement.

D. For a period of three (3) years after the Divestiture Date, Respondents shall provide to the Acquirer an automatic forwarding of all e-mails sent to any e-mail address with the DaVita or DaVita Medical Holdings domain names that was used by an employee or affiliate of the HealthCare Partners Nevada Business within the three years prior to the Divestiture Date. Such forwarding shall be (i) in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective e-mail(s) and (ii) to an e-mail address or addresses designated by the Acquirer.

V. Employees

IT IS FURTHER ORDERED that:

A. Respondent shall:

1. for a period of one (1) year from the Divestiture Date provide the Acquirer with the opportunity to interview and enter into employment contracts with the Information Technology and Critical Services Employees for a position that is primarily related to the operation of the HealthCare Partners Nevada Business, hereinafter referred to as the "Information Technology and Critical Services Employee Access Period;"

2. not later than ten (10) business days after written request by the Acquirer, provide the Acquirer with the Employee Information. Failure by Respondents to provide the Employee Information for any Information Technology and Critical Services Employee within the time provided herein shall extend the Information Technology and Critical Services Employee Access Period with respect to that employee in an amount equal to the delay; and

3. during the Information Technology and Critical Services Employee Access Period, not interfere with the hiring or employing by the Acquirer of the Information Technology and Critical Services Employees, and remove any impediments within the control of Respondents that may deter or prevent these employees from accepting employment with the Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment or other contracts with the Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, the Respondents shall not make any counteroffer to such Information Technology and Critical Services Employee who has received a written offer of employment from the Acquirer;

provided, however, this Paragraph shall not prohibit Respondents from continuing to employ any Information Technology and Critical Services Employee under the terms of that employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to that employee.

B. From the Divestiture Date until the date that is two (2) years after the Divestiture Date, Respondents shall not, directly or indirectly, induce or solicit any Essential Employee to leave the service or employment of the Acquirer;

provided, however, that such prohibitions shall not apply to (i) general solicitations for employment through advertisements or similarly directed efforts, (ii) general solicitations by Third-Parties (such as recruiters), (iii) any such employee that has been terminated by the Acquirer, or (iv) any hiring of any Essential Employee who resigned from the Acquirer at least six (6) months prior to being hired by the Respondents.

C. On or before the Divestiture Date, Respondents shall notify each Essential Employee of the above-described provisions of this Order that pertain to that employee. Respondents shall give such notification by e-mail with return receipt requested or similar transmission with a copy to the Acquirer.

D. From the Divestiture Date until the date that is two (2) years after the Divestiture Date, Respondent UnitedHealth shall not permit any of its employees who are current or former employees of DaVita or DaVita Medical Holdings:

1. to negotiate with any Healthcare Plan to provide Healthcare Provider services for the purposes of a Nevada Medicare Advantage Plan, or

2. to participate in the internal or external discussions or communications related to any negotiations with that Healthcare Plan related to a Nevada Medicare Advantage Plan,

if that employee engaged in such activities in connection with that Healthcare Plan as an employee of DaVita or DaVita Medical Holdings prior to the Divestiture Date.

VI. Asset Maintenance

IT IS FURTHER ORDERED that:

A. Until Respondents complete the divestiture of the HealthCare Partners Nevada Assets to the Acquirer, Respondents shall take actions as are necessary to:

1. maintain the full economic viability and marketability of the HealthCare Partners Nevada Assets;

2. minimize any risk of loss of competitive potential for the HealthCare Partners Nevada Business;

3. prevent the destruction, removal, wasting, deterioration, or impairment of any of the HealthCare Partners Nevada Assets; and

4. ensure that each of the assets comprising the HealthCare Partners Nevada Assets is provided to the Acquirer without disruption, delay, or impairment of any regulatory approval processes related to the HealthCare Partners Nevada Business.

B. Respondents shall not sell, transfer, encumber, or otherwise impair HealthCare Partners Nevada Assets other than in the manner prescribed in this Order.

VII. Confidential Business Information

IT IS FURTHER ORDERED that:

A. Respondents shall:

1. transfer and deliver to the Acquirer, at Respondents' expense, all HealthCare Partners Nevada Confidential Business Information:

   a. in good faith;

   b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

   c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

2. pending complete delivery of all such HealthCare Partners Nevada Confidential Business Information to the Acquirer, provide the Acquirer and the Monitor with access to all such HealthCare Partners Nevada Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files that contain such HealthCare Partners Nevada Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

3. not use, directly or indirectly, any such HealthCare Partners Nevada Confidential Business Information other than as necessary to comply with the following:

   a. the requirements of the Orders;

   b. Respondents' obligations to the Acquirer under the terms the HealthCare Partners Nevada Divestiture Agreements; or

c. applicable Law;

4. not disclose or convey any HealthCare Partners Nevada Confidential Business Information, directly or indirectly, to any Person *except* (i) the Acquirer, (ii) other Persons authorized by that Acquirer or staff of the Commission to receive such information, (iii) the Commission, or (iv) the Monitor, and *except* to the extent necessary to comply with applicable Law;

5. not provide, disclose or otherwise make available, directly or indirectly, any HealthCare Partners Nevada Confidential Business Information to the employees associated with the business that is being retained, owned, or controlled by the Respondents, other than those employees directly involved in providing Transition Services to the Acquirer or who are engaged in the transfer and delivery of the Information Technology to the Acquirer and only for the purposes of providing such Transition Services or such transfer and delivery;

6. institute procedures and requirements to ensure that the employees providing Transition Services to the Acquirer or who are engaged in the transfer and delivery of the Information Technology to the Acquirer:

    a. do not provide, disclose or otherwise make available, directly or indirectly, any HealthCare Partners Nevada Confidential Business Information in contravention of the Orders; and

    b. do not solicit, access, or use any HealthCare Partners Nevada Confidential Business Information that they are prohibited from receiving for any reason or purpose; and

7. take all actions necessary and appropriate to prevent access to, and the disclosure or use of, the HealthCare Partners Nevada Confidential Business Information by or to any Person(s) not authorized to access, receive, and/or use such information pursuant to the terms of the Orders or the HealthCare Partners Nevada Divestiture Agreements, including:

    a. establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system and network controls and restrictions;

    b. to the extent practicable, maintaining HealthCare Partners Nevada Confidential Business Information separate from other data or information of the Respondents; and

    c. ensuring by other reasonable and appropriate means that HealthCare Partners Nevada Confidential Business Information is not shared with Respondents' personnel engaged in the provision of the same or substantially the same type of business in Nevada as the HealthCare Partners Nevada Business.

B. Each Respondent shall ensure that its own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer (*except* that such counsel shall (i) not be required to delete copies of such materials from back up, archival electronic storage that is not available to an end user and cannot be expunged without considerable effort and (ii) be entitled to keep a copy of any such materials to the extent required by applicable Law or bona fide internal compliance or document retention policies) or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

1. to ensure such Respondent's compliance with the HealthCare Partners Nevada Divestiture Agreements, this Order, any Law (including any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

2. to defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena, or other proceeding relating to the divestiture or any other aspect of the HealthCare Partners Nevada Business;

provided, *however*, that a Respondent may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement, or arrangement;

provided further, *however*, that pursuant to this Paragraph, a Respondent needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VIII. Monitor

IT IS FURTHER ORDERED that:

A. John P. Harris shall serve as the Monitor to observe and report on Respondents' compliance with all of Respondents' obligations as required by the Orders and the HealthCare Partners Nevada Divestiture Agreements.

B. Not later than one (1) day after the Acquisition Date, Respondents shall confer on the Monitor all rights, powers, and authorities necessary to monitor each Respondent's compliance with the terms of the Orders.

C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor each Respondent's

compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission or its staff;

2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission; and

3. The Monitor shall serve until Respondents complete the following in a manner as required by this Order:

   a. the transfer and delivery of all of the HealthCare Partners Nevada Assets to the Acquirer;

   b. the transfer and delivery of all of the Information Technology to the Acquirer;

   c. the transfer and delivery of all HealthCare Partners Nevada Confidential Business Information to the Acquirer; and

   d. the provision of all Transition Services to the Acquirer.

D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to each Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities, technical information, and such other relevant information as the Monitor may reasonably request, related to that Respondent's compliance with its obligations under the Orders.

E. Each Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor that Respondent's compliance with the Orders.

F. The Monitor shall serve, without bond or other security, at the expense of Respondent UnitedHealth, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent UnitedHealth, such consultants (including information technology experts), accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

H. Respondents shall report to the Monitor in accordance with the requirements of the Orders

and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by a Respondent, and any reports submitted by the Acquirer with respect to the performance of a Respondent's obligations under the Orders. Within thirty (30) days after the Order Date and every ninety (90) days thereafter, and at such other times as my be requested by staff of the Commission, the Monitor shall report in writing to the Commission concerning performance by the Respondents of the Respondents' obligations under the Orders.

I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.

J. The Commission, among other things, may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the following manner:

1. the Commission shall select the substitute Monitor, subject to the consent of Respondent UnitedHealth, which consent shall not be unreasonably withheld. If Respondent UnitedHealth has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent UnitedHealth of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor; and

2. not later than ten (10) days after the Commission's appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on that Monitor all the rights, powers, and authorities necessary to permit that Monitor to monitor each Respondent's compliance with the Orders in a manner consistent with the purposes of the Orders.

L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

M. The Monitor may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

A. If the Respondents have not fully complied with the obligations to assign, grant, license,

divest, transfer, deliver, or otherwise convey the HealthCare Partners Nevada Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by a Respondent to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission;

   provided, however, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee

shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by a Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent UnitedHealth, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent UnitedHealth, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent UnitedHealth, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not

resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. The Commission, among other things, may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.

X. Prior Notification of Acquisitions

IT IS FURTHER ORDERED that:

A. For a period of ten (10) years beginning on the Order Date, Respondent UnitedHealth shall not, without providing advanced written notification to the Commission in the manner described in this paragraph ("Notification"), directly or indirectly, through subsidiaries, partnerships or otherwise:

1. acquire any Ownership Interest in (i) any Person that owns any interest in, operates, or employs any Las Vegas Healthcare Provider, or (ii) any Person that owned any interest in, operated, or employed any Las Vegas Healthcare Provider within six (6)

months prior to such proposed transaction;

2. acquire rights to control, choose, or designate any Ownership Interest in any of the Persons described in Paragraph X.A.1; or

3. enter into any contract to affiliate with and to become a management services organization (*e.g.*, control all back office or administrative functions) for any of the Persons described in Paragraph X.A.1.

B. The Notification shall contain:

1. either a detailed term sheet for the proposed transaction, or the proposed agreement with all attachments; and

2. documents that would be responsive to Item 4 (c) and 4 (d) of the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended.

C. Respondent UnitedHealth shall provide the Notification to the Commission and a copy of the Notification to the Attorney General of the State of Nevada at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent UnitedHealth shall not consummate the transaction until twenty (20) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition;

provided, however, that the advanced written notification provisions of this Paragraph shall not apply to any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition Date occurred, including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov.

B. Within five (5) days of the Divestiture Date, Respondents shall submit to Commission staff a letter certifying the date of the Divestiture Date, including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov.

C. Within thirty (30) days after the Order Date, and every ninety (90) days thereafter until Respondents have completed all of the following: (i) the transfer and delivery of all of the

HealthCare Partners Nevada Assets to the Acquirer, (ii) the transfer and delivery of all of the Information Technology to the Acquirer, (iii) the transfer and delivery of all HealthCare Partners Nevada Confidential Business Information to the Acquirer, and (iv) the provision of Transition Services to the Acquirer, Respondents shall submit to the Commission and, at the same time, to the Monitor, a verified written report setting forth in detail the manner and form in which the Respondents intend to comply, are complying, and have complied with the requirements of the Orders ("Compliance Reports").

D. Each Compliance Report shall contain sufficient information and documentation to enable the Commission independently to determine whether Respondents are in compliance with the Orders. Conclusory statements that Respondents have complied with their obligations under the Orders are insufficient. Respondents shall include in their Compliance Reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Orders, including:

1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the transfer and delivery of all of the HealthCare Partners Nevada Assets to the Acquirer, (ii) the transfer and delivery of all of the Information Technology to the Acquirer, (iii) the transfer and delivery of all HealthCare Partners Nevada Confidential Business Information to the Acquirer, and (iv) the provision of Transition Services to the Acquirer; and

2. a detailed description of the timing for the completion of such obligations.

E. One (1) year after the Order Date, annually for the next nine (9) years on the anniversary of the Order Date, and at other times as the Commission may require, Respondent UnitedHealth shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

F. Respondents shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or other officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each Compliance Report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each Compliance Report to the Monitor.

XII. Change in Respondents

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of: UnitedHealth Group Incorporated; Collaborative Care Holdings, LLC; DaVita Inc.; or DaVita Medical Holdings, LLC;

B. any proposed acquisition, merger, or consolidation of: UnitedHealth Group Incorporated;

Collaborative Care Holdings, LLC; DaVita Inc.; or DaVita Medical Holdings, LLC; or

C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XIII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to a Respondent made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters address, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of that Respondent; and

B. to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of the divestiture of the HealthCare Partners Nevada Assets and the related obligations imposed on the Respondents by this Order is:

A. to ensure the continued use of the HealthCare Partners Nevada Assets for the purposes of the HealthCare Partners Nevada Business;

B. to create a viable and effective competitor that is independent of Respondents in the lines of business associated with the HealthCare Partners Nevada Business; and

C. to remedy the lessening of competition resulting from the acquisition of DaVita Medical Holdings by UnitedHealth as alleged in the Commission's Complaint in a timely and sufficient manner.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate on the date ten (10) years after the Order Date**.**

By the Commission, Chairman Simons recused.

April J. Tabor
Acting Secretary

SEAL

ISSUED:

NON-PUBLIC APPENDIX I

ESSENTIAL EMPLOYEES
[Cover Page]

NON-PUBLIC APPENDIX II
AGREEMENTS RELATED TO THE DIVESTITURE OF HEALTHCARE PARTNERS NEVADA ASSETS
[Cover Page]

PUBLIC APPENDIX III

MONITOR AGREEMENT
[Cover Page]

NON-PUBLIC APPENDIX III-1

MONITOR COMPENSATION
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