

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

DAVITA INC.,
a corporation.

Docket No. C-

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by DaVita Inc. of CDSI I Holding Company, Inc. (“DSI”), and DaVita Inc. (hereafter referred to as “Respondent DaVita”) having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent DaVita 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; and

Respondent DaVita, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent DaVita of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent DaVita that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent DaVita has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate Order”), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the

Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. 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 office and principal place of business located at 1551 Wewatta St. Denver, Colorado 80202.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent DaVita, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “DaVita” means DaVita Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by ~~Da~~

- I. “Appendix A Joint Venture Equity Interests” means the joint venture equity interest owned by DSI in each of the following joint ventures: (1) Renal Care Group South Tampa, LLC; (2) DSI El Paso, LLC (3) Renal Care Group Galleria, LLC; and (4) DSI Greenville, LLC. The joint ventures are more fully described in Appendix A-2.
- J. “Appendix F Clinics” means the clinics identified in Non-Public Appendix F that are owned by DaVita in locations proximate to the DSI Clinics listed in Appendix A. In any given location, there may be a greater, smaller, or equal number of DaVita Clinics in Non-Public Appendix F that correspond to DSI Clinics in any given location.
- K. “Appendix F Clinic Assets” means the Appendix F Clinics, the Appendix F Joint Venture Equity Interests and all Assets Associated with each of the Appendix F Clinics, except for the Owned Real Property.
- L. “Appendix F Joint Venture Equity Interests” means the joint venture equity interest owned by DSI described in Appendix F-2.
- M. “Assets Associated” means the following assets Relating To the Operation Of A Clinic:
 - 1. all riPr2400 0.0a0000 TD(n-)Tj9.9600 0.0000 TD(Pub)Tj18.7200 0.0000 TD(lic)TjET1.00000 0.00000

- d. Physician lists and other records of the Clinic’s dealings with Physicians,
 - e. maintenance records,
 - f. documents Relating To policies and procedures,
 - g. documents Relating To quality control,
 - h. documents Relating To Payors,
 - i. documents Relating To Suppliers,
 - j. documents Relating To Clinics other than the Clinic To Be Divested, *PROVIDED, HOWEVER*, if such documents are located other than on the premises of the Clinic To Be Divested, Respondent DaVita may submit a copy of the document with the portions not Relating To the Clinic To Be Divested redacted, and
 - k. copies of contracts with Payors and Suppliers, unless such contracts cannot, according to their terms, be disclosed to third parties even with the permission of Respondent DaVita to make such disclosure;
6. Respondent DaVita’s and DSI’s Medicare and Medicaid provider numbers, to the extent transferable;
 7. all permits and licenses, to the extent transferable;
 8. Intangible Property relating exclusively to the Operation Of The Clinic; and a royalty-free perpetual worldwide license for the use, without any limitation, of all other Intangible Property Relating To the Operation Of The Clinic (including the right to transfer or sublicense such Intangible Property, exclusively or nonexclusively, to others by any means); and
 9. assets that are used in, or necessary for, the Operation Of The Clinic.

PROVIDED, HOWEVER, that “Assets Associated” does not include Excluded Assets.

- N. “Assets To Be Divested” means the Appendix A Clinic Assets and any Appendix F Clinic Assets divested pursuant to Paragraph V.A. of the Order.
- O. “Clinic” means a facility that provides hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.
- P. “Clinic’s Physician Contracts” means all agreements to provide the services of a Physician to a Clinic, regardless of whether any of the agreements are with a Physician or with a medical group, including, but not limited to, agreements for the services of a medical

director for the Clinic and “joinder” agreements with Physicians in the same medical practice as a medical director of the Clinic.

- Q. “Clinic To Be Divested” and “Clinics To Be Divested” means the Appendix A Clinics, the Appendix A Joint Venture Equity Interests and any Appendix F Clinics or Appendix F Joint Venture Equity Interests divested pursuant Paragraph V.A. of the Order.

- R. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a Person’s business, and includes, but is not limited to, all customer lists, price lists, contracts,

- Z. "Effective Date" means the date on which Respondent DaVita acquires DSI.
- AA. "Employee Of A Clinic To Be Divested" and "Employee Of The Clinic To Be Divested" mean any individual (including, but not limited to, a clinic director, manager, nurse, technician, clerk, or social worker) who is not a Regional Manager, who is employed by Respondent DaVita, or before the Acquisition, by DSI, by an Acquirer, or by another manager or owner of such Clinic To Be Divested, and who has worked part-time or full-time on the premises of such Clinic To Be Divested at any time since January 1, 2011, regardless of whether the individual has also worked on the premises of any other Clinic.
- BB. "Excluded Assets" means:
1. all cash, cash equivalents, and short term investments of cash;
 2. accounts receivable;
 3. income tax refunds and tax deposits due Respondent DaVita or DSI;
 4. unbilled costs and fees, and Medicare bad debt recovery claims, arising before a Clinic

13. e-mail addresses and telephone numbers of Respondent DaVita's and DSI's employees;
14. Software;
15. computer hardware used in the Operation Of The Clinic that is (a) not located at the Clinic, and (b) not otherwise to be divested pursuant to a Divestiture Agreement;
16. all Supplier or provider numbers issued to Respondent DaVita or DSI by a Supplier or Payor with respect to any Clinic To Be Divested, except for Respondent DaVita's or DSI's Medicare and Medicaid provider numbers for each Clinic To Be Divested;
17. rights under agreements with Payors and Suppliers that are not assignable even if Respondent DaVita and DSI approve such assignment;
18. office equipment and furniture that (a) is not, in the Ordinary Course Of Business, physically located at the Clinic To Be Divested, (b) is shared with Clinics other than the Clinic To Be Divested, and (c) is not necessary to the Operation Of The Clinic To Be Divested.
19. Licensed Intangible Property; and
20. strategic planning documents that
 - a. relate to the Operation Of The Clinic other than the Clinic To Be Divested, and
 - b. are not located on the premises of the Clinic To Be Divested.

CC. "Frazier" means Frazier Healthcare, a growth equity and venture capital partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 601 Union Street, Suite 3200, Seattle, WA 98101.

DD. "Frazier/NEA Divestiture Agreements" means the following agreements:

1. the Amended and Restated Asset Purchase Agreement dated August 26, 2011, by and among Dialysis Newco, Inc., CDSI I Holding Company, Inc., and DaVita Inc., and all attachments and exhibits, thereto, and
2. the Transition Services Agreement dated August 26, 2011, between Dialysis Newco, Inc. and DaVita Inc., and all attachments and exhibits, thereto.

(The Frazier/NEA Divestiture Agreements are attached as Non-Public Appendix E to this Order.)

- EE. “Governmental Approvals” means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.
- FF. “Government Approvals For Continued Operation” means any Governmental Approvals, other than Government Approvals For Divestiture, that an Acquirer must have to continue to operate a Clinic To Be Divested.
- GG. “Governmental Approvals For Divestiture” means any Governmental Approvals that an Acquirer must have to own, and to initially operate, a Clinic To Be Divested, including, but not limited to, state-issued licenses and state-issued certificates of need.
- HH. “Illinois Governmental Approvals For Divestiture” means any Governmental Approvals For Divestiture issued by the State of Illinois.
- II. “Illinois Clinic Assets” means the DSI Scottsdale Clinic located at 4651 West 79th Street, Unit 100 Chicago, IL 60652, and all Assets Associated with that Clinic.
- JJ. “Intangible Property” means intangible property Relating To the Operation Of A Clinic To Be Divested including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intangible property.
- KK. “Licensed Inta

1. attracting patients to the Clinic for dialysis services, providing dialysis services to patients of the Clinic, and dealing with their Physicians, including, but not limited to, services Relating To hemodialysis and peritoneal dialysis;
2. providing medical products to patients of the Clinic;
3. maintaining the equipment on the premises of the Clinic, including, but not limited to, the equipment used in providing dialysis services to patients;
4. purchasing supplies and equipment for the Clinic;
5. negotiating leases for the premises of the Clinic;
6. providing counseling and support services to patients receiving products or services from the Clinic;
7. contracting for the services of medical directors for the Clinic;
8. dealing with Payors that pay for products or services offered by the Clinic, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and
9. dealing with Governmental Approvals Relating To the Clinic or that otherwise regulate the Clinic.

OO. "Ordinary Course Of Business" mea

Protocols (including the right to transfer or sublicense such protocols, exclusively or nonexclusively, to others by any means); *PROVIDED, HOWEVER*, that Respondent DaVita may receive, as a part of the Frazier/NEA Divestiture Agreements and for a reasonable amount of time during a transition period, a royalty-free perpetual worldwide license for the use of DSI's Medical Protocols (not including the right to transfer or sublicense such protocols, exclusively or nonexclusively, to others by any means).

2. within ninety (90) days after the Effective Date, divest to Frazier/NEA, absolutely, and in good faith, pursuant to and in accordance with the Frazier/NEA Divestiture Agreements, the Alabama Clinic Assets, as an on-going business.
3. within ninety (90) days after the Effective Date, divest to Frazier/NEA, absolutely, and in good faith, pursuant to and in accordance with the Frazier/NEA Divestiture Agreements, the Illinois Clinic Assets, as an on-going business.

PROVIDED, HOWEVER, if, at the time the Commission determines to make this Order final, the Commission notifies Respondent DaVita that Frazier/NEA is not an acceptable Acquirer then, after receipt of such written notification: (1) Respondent DaVita shall immediately notify Frazier/NEA of the notice received from the Commission and shall as soon as practicable, but no later than within five (5) business days, effect the rescission of the Divestiture Agreement; and (2) Respondent DaVita shall: (a) within six (6) months of the date DaVita receives notice of such determination from the Commission, divest the Appendix A Clinic Assets, except for the Alabama Clinic Assets and the Illinois Clinic Assets, absolutely and in good faith, at no minimum price, as on-going businesses to an Acquirer or Acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; and (b) within eight (8) months of the date DaVita receives notice of such determination from the Commission, divest the Alabama Clinic Assets and the Illinois Clinic Assets absolutely and in good faith, at no minimum price, as on-going businesses, to an Acquirer or Acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

PROVIDED FURTHER, HOWEVER, that if Respondent DaVita has complied with the terms of this Paragraph before the date on which this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent DaVita that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent DaVita or appoint the Divestiture Trustee, to effect such modifications to the manner of divestiture 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.

- B. The Frazier/NEA Divestiture Agreements are incorporated by reference into this Order and made a part hereof as Confidential Appendix E. Any failure by Respondent DaVita to comply with the Frazier/NEA Divestiture Agreements shall constitute a failure to comply with the Order. The Frazier/NEA Divestiture Agreements shall not vary or contradict, or be

D. Respondent DaVita shall:

1. at the Time Of Divestiture of each Clinic To Be Divested, provide to the Acquirer of such Clinic contact information about Payors and Suppliers for the Clinic, and
2. not object to the sharing of Payor and Supplier contract terms Relating To the Clinics To Be Divested: (i) if the Payor or Supplier consents in writing to such disclosure upon a request by the Acquirer, and (ii) if the Acquirer enters into a confidentiality agreement with Respondent DaVita not to disclose the information

G to whom the Acquirer does not intend to offer employment, then such employees may be hired by Respondent DaVita as full time employees without violating this Paragraph II.E. *PROVIDED, FURTHER, HOWEVER*, that no earlier than fifteen (15) days after the Time of Divestiture, Respondent DaVita may submit a written request to the Acquirer identifying those persons from the Non-Public Appendix G to whom Respondent DaVita wishes to offer full time employment; and if the Acquirer within fifteen (15) days of receipt of such request grants, in writing, such request, then Respondent DaVita may offer employment to such employees; but if the Acquirer within fifteen (15) days of receipt of such request either: (i) chooses to hire such employees, or (ii) chooses to defer a hiring decision and keep the requested employees on the Non-Public Appendix G, then Respondent DaVita shall continue to comply with the terms of this Paragraph II.E. with regard to such employees.

- F. For a period of two (2) years following the Time Of Divestiture of each Clinic To Be Divested, Respondent DaVita shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Designated DaVita Employee who is employed by the Acquirer to terminate his or her employment relationship with the Acquirer, unless that employ

PROVIDED, HOWEVER, if the Contract Physician, or the Contract Physician's practice group, or other members of the Contract Physician's practice group were providing services to a Clinic pursuant to a contract with Respondent DaVita or DSI in effect as of January 1, 2011, then Respondent DaVita may contract with such Contract Physicians, or the Contract Physician's practice group, or other members of the Contract Physician's practice group for services to be provided to that particular Clinic.

H. Respondent DaVita shall:

1. not disclose Confidential Business Information relating exclusively to any of the Clinics To Be Divested to any Person other than the Acquirer of such Clinic;
2. after the Time Of Divestiture of such Clinic:
 - a. Respondent DaVita shall not use Confidential Business Information relating exclusively to any of the Clinics To Be Divested for any purpose other than complying with the terms of this Order or with any law; and
 - b. Respondent DaVita shall destroy all records of Confidential Business Information relating exclusively to any of the Clinics To Be Divested , except to the extent that: (1) Respondent DaVita is required by law to retain such information, and (2) Respondent DaVita's inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of Respondent DaVita.

I. At the Time Of Divestiture of each Clinic To Be Divested, Respondent DaVita shall provide the Acquirer of the Clinic with manuals, instructions, and specifications sufficient for the Acquirer to access and use any information

1. divested to the Acquirer pursuant to this Order, or
2. in the possession of the Acquirer, and previously used by Respondent DaVita or DSI in the Operation Of The Clinic.

J. For two (2) years following the Time Of Divestiture of each Clinic To Be Divested, Respondent DaVita shall not solicit the business of any patients that received any goods or services from such Clinic between July 1, 2010, and the date of such divestiture, *PROVIDED, HOWEVER*, Respondent DaVita may (i) make general advertisements for the business of such patients including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at such patients, and (ii) provide advertising and promotions directly to any patient that initiates discussions with, or makes a request to, any Respondent DaVita employee.

K. Respondent DaVita shall convey to each Acquirer of a Clinic To Be Divested the right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor), if such right is needed for the Operation Of The Clinic by the Acquirer and if the Acquirer is

unable, using commercially reasonable efforts, to obtain equivalent rights from other third parties on commercially reasonable terms and conditions.

- L. Respondent DaVita shall do nothing to prevent or discourage Suppliers that, prior to the Time Of Divestiture of any Clinic To Be Divested, supplied goods and services for use in any Clinic To Be Divested from continuing to supply goods and services for use in such Clinic.
- M. Respondent DaVita shall not acquire DSI until it has obtained for all the Appendix A Clinics:
 - 1. all approvals for the assignment of the Clinic's Physician Contracts, as required by Paragraph II.C.3.b.of this Order;
 - 2. all approvals by joint venture partners necessary for the Acquirer to acquire the Appendix A Clinics that are owned by a joint venture, and shall assign all such approvals to the Acquirer; and
 - 3. all approvals by joint venture partners necessary for the Acquirer of Appendix A Joint Venture Equity Interests to jointly own and operate the Appendix A Clinics that are owned by the joint venture, and shall assign all such approvals to the Acquirer.

Copies of all such approvals shall be incorporated into the Divestiture Agreements as appendices.

- N. Respondent DaVita shall not acquire DSI until it has:
 - 1. included, as part of the Divestiture Agreements, a letter stating that the Osceola Non-Compete is rescinded and that it will not be re-entered or re-negotiated for five (5) years following the Time of Divestiture; and
 - 2. provided notice to all parties involved in the Osceola Non-Compete that the Osceola Non-Compete has been rescinded.
- O. With respect to Respondent DaVita's Medical Protocols:
 - 1. Respondent DaVita shall retain a copy of DaVita's Medical Protocols until six (6) months after all of the Assets To Be Divested have been divested, pursuant to this Order;
 - 2. If any Acquirer of a Clinic To Be Divested requests in writing to Respondent DaVita:
 - a. within six (6) months of the Time Of Divestiture of that Clinic to that Acquirer, that DaVita license a copy of DaVita's Medical Protocols to that Acquirer, DaVita shall within five (5) business days of such request, grant to that Acquirer a royalty-free

perpetual worldwide license for the use, without any limitation, of DaVita's Medical Protocols (including the right to transfer or sublicense such protocols, exclusively or nonexclusively, to others by any means); or

b. before the Time of Divestiture, that DaVita license a copy of DaVita's Medical Protocols to that Acquirer, DaVita shall grant, as part of the Divestiture Agreements, to that Acquirer for a reasonable amount of time during a transition period, a royalty-free perpetual worldwide license for the use of DaVita's Medical Protocols (not including the right to transfer or sublicense such protocols, exclusively or nonexclusively, to others by any means); and

3. DaVita shall create no disincentive for any Acquirer of a Clinic To Be Divested to make such a request for a license for DaVita's Medical Protocols, and shall not enter into any agreement or understanding with any Acquirer that the Acquirer not make such a request.

P. Respondent DaVita shall not terminate any transition services agreement that is a part of the Frazier/NEA Divestiture Agreements before the end of the term approved by the Commission without:

1. the written agreement of the Acquirer and thirty (30) days prior notice to the Commission; or,

2. in the case of a proposed unilateral termination by Respondent DaVita due to an alleged breach of an agreement by the Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall be given only after the parties have:

a. attempted to settle the dispute between themselves, and

b. engaged in arbitration and received an arbitrator's decision, or

c. received a final court decision after all appeals.

Q. The purpose of Paragraph II of this Order is to ensure the continuation of the Clinics To Be Divested as, or as part of, ongoing viable enterprises engaged in the same business in which such assets were engaged at the time of the announcement of the acquisition by Respondent DaVita Inc. of DSI, to ensure that the Clinics To Be Divested are operated independently of, and in competition with, Respondent DaVita, and to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that for a period of five (5) years from the date this Order is issued, Respondent DaVita shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:

- A. acquire any assets of or financial interest in any Clinic located in any of the areas listed in Appendix B of this Order; or
- B. enter into any contract to participate in the management or Operation Of A Clinic located in any of the areas listed in Appendix B of this Order, except to the extent that the contract relates exclusively to:
 - 1. off-site lab services or social worker support materials; or
 - 2. billing services, collection services, bookkeeping services, accounting services, supply purchasing and logistics services, or the preparation of financial reports and accounts receivable reports (collectively “Such Services”), where appropriate firewalls and confidentiality agreements are implemented to prevent Confidential Business Information of the Clinic from being disclosed to anyone participating in any way

IV.

9. Respondent DaVita 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*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
- F. 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 same manner as provided in this Paragraph IV.
- G. 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 this Order, the Order to Maintain Assets, and the Divestiture Agreements.
- H. A Monitor appointed pursuant to this Order may be the same Person appointed as a trustee pursuant to Paragraph V of this Order and may be the same Person appointed as Monitor under the Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent DaVita has not divested, absolutely and in good faith and with the Commission's prior approval, all of the Appendix A Assets pursuant to Paragraph II of this Order, the Commission may appoint a trustee to (1) divest any of the Appendix A Assets that have not been divested pursuant to Paragraph II of this Order in a manner that satisfies the requirements of Paragraph II of this Order, which may include negotiations with landlords holding leases to the Assets to be Divested; or, in the event the Appendix A Clinics cannot be divested for whatever reason, (2) divest selected Appendix F Clinic Assets at the option of the Divestiture Trustee and the Commission. 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, Respondent DaVita shall consent to the appointment of a trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a 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 trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent DaVita to comply with this Order.

- B. The Commission shall select the trustee, subject to the consent of Respondent DaVita, which consent shall not be unreasonably withheld. The trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent DaVita has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondent DaVita of the identity of any proposed trustee, Respondent DaVita shall be deemed to have consented to the selection of the proposed trustee.
- C. Within ten (10) days after appointment of a trustee, Respondent DaVita shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.
- D. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondent DaVita shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any of the Appendix A Assets that have not been divested pursuant to Paragraph II of this Order and, subject to the provisions of Paragraph V.A. of the Order, divest Appendix F Clinic Assets.
 - 2. The trustee shall have twelve (12) months from 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 twelve (12) month period, the trustee has submitted a divestiture plan or the Commission believes that the divestiture 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 trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the trustee may request. Respondent DaVita shall develop such financial or other information as the trustee may require.

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

APPENDIX A

APPENDIX A CLINICS

	Clinic Name	Clinic Address



APPENDIX A-2

Appendix A Joint Ventures



APPENDIX B

AREA DEFINITIONS TO APPENDIX A



17	DSI Easley, Greenville, Pleasantburg, Powderhorn	The area in and/or near Greenville, South Carolina consisting of: 29625, 29660, 29601, 29605, 29607, 29609, 29611, 29613, 29615, 29617, 29630, 29640, 29642, 29644, 29645, 29657, 29661, 29662, 29669, 29671, 29673, 29680, 29681, and the portion of 29687 that lies south of State Highway 290 and S-23-415.
18	DSI Galleria	The area in and/or near Memphis, Tennessee consisting of: 38002, 38016, 38018, 38068, 38120, 38125, 38127, 38128, 38133, 38134, and 38135.
19	DSI Memphis South:	The are in and/or near Memphis, Tennessee, consisting of: 38111, 38114, 38115, 38117, 38118, 38141, and 38152.
20	DVA Beeville 2245	The area in and/or near Beeville, Texas consisting of: 78102, 78389, 78391. the portion of 77963 that lies south of State Highway 239 and west of US-77, the portion of 78022 that lies east of I-37, the portion of 78071 that lies east of I-37 and State Highway 72, the portion of 78119 that lies south of State Highway 72 and State Highway 239, the portion of 78368 that lies east of I-37, and the portions of 78377, 78378 and 78391 that lie west of US-77.
21	DVA Oso Bay 2219	The area in and/or near Corpus Christi, Texas consisting of: 78401, 78402, 78404, 78405, 78407, 78411, 78413, 78414, 78415, 78416, 78417, 78418, and 78419.
22	DSI El Paso W and El Paso E	The area in and/or near El Paso, Texas consisting of: 88063, 79836, 79838, 79853, 79901, 79902, 79903, 79905, 79907, 79912, 79922, 79927, 79930, 79932, 79968, and the portions of 79821 and 79835 that lie to the west of E.P.N.G. Pipeline Rd., the portions of 79904 and 79924 that lie to the east of US-54, the portions of 79925, 79935 and 79936 that lie to the south of US-62, and the portions of 79928 and 79938 that are within El Paso County (Texas), Texas.

APPENDIX C

MONITOR AGREEMENT

NON-PUBLIC APPENDIX C-1

**COMPENSATION PROVISIONS OF
MONITOR AGREEMENT**

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX D

EXCLUDED TRADEMARKS & DESIGNS

NON-PUBLIC APPENDIX E

FRAZIER/NEA DIVESTITURE AGREEMENTS

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX F

LIST OF ALTERNATIVE CLINICS TO DIVEST

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX F-2

LIST OF ALTERNATIVE JOINT VENTURES

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX G

ADDITIONAL DAVITA AND DSI EMPLOYEES LIST

[Redacted From the Public Record Version, But Incorporated By Reference]